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NATIONAL ARCHIVES OF INDIA

CONSTITUTIONAL PRECEDENTS

(THIRD SERIES)

PAMPHLET NO. 1 : Fundamental Rights (I).

SNO. 1643 -

NATIONAL ARCHIVES OF

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FUNDAMENTAL RIGHTS (I)

One of the earliest tasks of the Constituent Assembly that is to frame the Constitution of the future Indian Union will be to set up an Advisory Committee "on the rights of citizens, minorities, and tribal and excluded areas". A Committee with such multifarious functions will doubtless find it necessary to split up into at least four sub-committees corresponding to the four branches of its work, and one of these sub-committees will have to deal with the subject of citizens' rights. This is a subject with a long history going back to Magna Carta and perhaps earlier, into the details of which it is unnecessary to enter here. It is sufficient for our present purpose to explain the nature of the problem and to indicate how it has been sought to be solved in other countries.

The Constitutions of a great many countries contain an imposing array of such rights, sometimes described as "fundamental rights". Reference is invited in this connection (1) to Amendments I-X, XIII-XV, and XIX to the Constitution of the U.S.A., (2) to Articles 4, 31, 44, 45, 49, 50, 55-58, 60 and 65 of the Swiss Constitution, (3) to Articles 109-160 of the German Constitution of 1919, (4) to Articles 118-128 of the Constitution of the U.S.S.R., (5) to Arricles 40-44 of the Constitution of Ireland (printed in the Second Series of Constitutional Precedents). England has no written Constitution, but the great Charters, Magna Carta, the Petition of Rights and the Bill of Rights form part of the Constitution. Broadly speaking, the rights declared in these Constitutions relate to equality before the law, freedom of speech, freedom of the press, freedom of religion, freedom of assembly, freedom of association, security of person and security of property. Within limits these are all well-recognised rights and it may be useful to draw attention to them by embodying them in the Constitutional Charter. The difficulty is in defining the precise limits in each case and in devising effective protection for the rights so limited. Some of the Constitutions have attempted to define the limits of some of these rights and in doing so have gone far towards destroying them. As an example, we may take Article 153 of the German Constitution of 1919, which runs :—

> "Property is guaranteed by the Constitution. Its extent and the restrictions placed upon it are defined by law.
>
> Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich."

In other words, rights of private property are said to be inviolable except where the law otherwise provides, which means that the rights are not inviolable. Similarly, Article 115 provides "The residence of every German is an inviolable sanctuary for him ; exceptions are admissible only in virtue of laws". The fact of the matter is that while these rights can be enunciated in broad terms, it is not possible to enumerate in advance every possible exception; the framers of the Constitution, therefore, leave the exceptions to be put in from time to time by the ordinary Legislature. The result is that there is no constitutional guarantee against an oppressive Legislature.

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The other difficulty, namely, that of devising effective protection for the rights defined, really arises out of the difficulty of definition already pointed out. Where a right can only be indicated in broad terms, there is an obvious risk in allowing it to be enforced in the ordinary courts, because there is no knowing how broadly they might interpret it. There are at least three alternatives possible in this connection :—

(1) to take this risk and allow the rights, however imperfectly defined, to be enforced in the ordinary courts ;

(2) to set out the rights merely as moral precepts for the authorities concerned and to bar the jurisdiction of the ordinary courts either expressly or by implication ;

(3) to allow the more easily definable rights to be enforced in the ordinary courts and keep the rest out of their purview.

The difficulties of the problem are best elucidated by a few concrete cases. Let us take one of the most frequently enumerated of these rights, that of equality before the law ; and let us take a country where the rights are enforceable by the Courts : the United States of America. The Fourteenth Amendment to the Constitution of the U.S.A., which came into operation in 1868, puts it in the form that no State shall "deny to any person within its jurisdiction the equal protection of the laws". Obviously, these words are not to be taken too literally ; otherewise, they would render invalid even a State law granting special protection to women or children, as distinguished from other inhabitants, *e.g.*, a law that exempted children under the age of seven from all criminal liability. And so it has been held by the Supreme Court that the mere fact that a law applies to a particular class of inhabitants and not to other classes is not sufficient to invalidate it. But even within the same main class, does the Fourteenth Amendment require absolute equality ?

In *Radice v. New York*, a case decided in 1924 [264 U.S. 292], the Supreme Court was called upon to decide whether a New York law which prohibited the employment of certain classes of women in restaurants of certain classes of cities between 10 p.m. and 6 a.m. was valid or not. The law, it will be noticed, not only did not apply to male employees, but did not even apply equally to all classes of women employees ; accordingly it was attacked as a breach of the Fourteenth Amendment. Nevertheless, the Court held that there was no breach. The Legislature can select special classes or sub-classes for special treatment, provided that the classification is not arbitrary, oppressive, or capricious and, of course, the Court is to decide whether it is so or not in any given case.

But the Court has not found this task easy. In 1902, in *Connolly v. Union Sewer Pipe Company* [184 U.S. 540], an anti-Trust statute of Illinois of 1893 came under scrutiny. The statute made trusts or combinations for certain specified purposes a criminal offence, but added that its provisions did not apply to agricultural products or livestock in the hands of the producer or raiser. It was argued against this statute that the exemption of agriculturists and stockmen was repugnant to the "equal protection" clause and therefore that the entire statute was invalid. The Supreme Court in accepting both these contentions observed :—

" If combinations of capital, skill, or acts, in respect of the sale or purchase of goods, merchandise, or commodities, whereby such combinations may, for their benefit exclusively, control or establish prices, are hurtful to the public interests and should be suppressed, it is impossible to perceive why like

combinations in respect of agricultural products and live-stock are not also hurtful. Two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicines, are, under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves or others in the sale of their goods or merchandise ; but their neighbours, who happen to be agriculturists and live-stock raisers, may make combinations of that character in reference to their grain or live-stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws ? * * *

" We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic trade or commerce shall be deemed criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to regard those regulations, but may combine their capital, skill, or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary. " [184 U. S. 564.]

Nearly forty years later, in 1940, in *Tigner v. Texas* [310 U. S. 141], an anti-Trust law of Texas of a similar character and containing a similar exemption in favour of agricultural products and live-stock again came before the Supreme Court. This time, the Court upheld the law, observing, " The equality at which the ' equal protection ' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins ' the equal protection of the laws ', and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties, addressed, to the attainment of specific ends by the use of specific remedies. *The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.* And so we conclude that to write into law the differences between agriculture and other economic pursuits was within the power of the Texas legislature. Connolly's case has been worn away by the erosion of time and we are of opinion that it is no longer controlling ". If the above qualification were incorporated in the Fourteenth Amendment, the " equal protection " clause would be diluted into the mild injunction that the State shall treat as equal in law only those persons within its jurisdiction who are equal in fact. It is, of course, for the Courts to judge whether persons are equal in fact ; but, we may add, the same classes of persons that appeared to the Courts in 1902 to be manifestly equal in fact were found in 1940 to be, in truth, unequal. The protection offered by the clause has thus worn very thin. Indeed, even a Nazi State might have accepted it on its present interpretation, for its Courts could be trusted to rule " A Jew is not equal to an Aryan in fact and there is therefore no ground for treating him as equal in law ". Needless to say, the Supreme Court of the United States has a higher conception of the dignity of man, and the constitutional protection, though " worn away by the erosion of time " in certain other spheres, is still potent in the racial. In *Missouri v. Gaines*, a case decided in 1938 [305 U. S. 337], a negro named Lloyd Gaines, who had been refused admission to

the School of Law of the State University of Missouri, sought to compel the University authorities to admit him upon the strength of the "equal protection" clause in the Constitution. The matter, after going through various Courts in the State, ultimately came before the Supreme Court of the United States ; the following extracts from the judgment give the full facts of the case and show the view taken by the majority :—

" Petitioner is a citizen of Missouri. In August, 1935, he was graduated with the degree of Bachelor of Arts at the Lincoln University, an institution maintained by the State of Missouri for the higher education of negroes. That University has no law school. Upon the filing of his application for admission to the law school of the University of Missouri, the registrar advised him to communicate with the president of Lincoln University and the latter directed petitioner's attention to Section 9622 of the Revised Statutes of Missouri (1929), Mo. St. Ann. § 9622, *p.* 7328, providing as follows :—

' §9622. *May arrange for attendance at university of any adjacent state—tuition fees.* Pending the full development of the Linclon university, the board of curators shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri, and which are not taught at the Lincoln university and to pay the reasonable tuition fees for such attendance; *provided* that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department. (Laws 1921, *p.* 86, §7.) '

" Petitioner was advised to apply to the State Superintendent of Schools for aid under that statute. It was admitted on the trial that petitioner's ' work and credits at the Lincoln University would qualify him for admission to the School of Law of the University of Missouri if he were found otherwise eligible.' He was refused admission upon the ground that it was ' contrary to the constitution, laws and public policy of the State to admit a negro as a student in the University of Missouri '. It appears that there are schools of law in connection with the state universities of four adjacent States, Kansas, Nebraska, Iowa an. Illinois, where non-resident negroes are admitted.

* * * *

"In answering petitioner's contention that this discrimination constituted a denial of his constitutional right, the state court has fully recognized the obligation of the State to provide negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfil that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions.

" But the fact remains that instruction in law for negroes is not now afforded by the State, either at Lincoln University or elsewhere within the State,

and that the State excludes negroes from the advantages of the law school it has established at the University of Missouri.

* * *

"The state court stresses the advantages that are afforded by the law schools of the adjacent States, Kansas, Nebraska, Iowa, and Illinois, which admit non-resident negroes. The court considered that these were schools of high standing where one desiring to practise law in Missouri can get 'as sound, comprehensive, valuable legal education' as in the University of Missouri; that the system of education in the former is the same as that in the latter and is designed to give the students a basis for the practice of law in any State where the Anglo-American system of law obtains; that the law school of the University of Missouri does not specialize in Missouri law and that the course of study and the case books used in the five schools are substantially identical. Petitioner insists that for one intending to practise in Missouri there are special advantages in attending a law school there, both in relation to the opportunities for the particular study of Missouri law and for the observation of the local courts, and also in view of the prestige of the Missouri law school among the citizens of the State, his prospective clients. Proceeding with its examination of relative advantages, the state court found that the difference in distances to be traveled afforded no substantial ground of complaint and that there was an adequate appropriation to meet the full tuition fees which petitioner would have to pay.

"We think that these matters are beside the point. The basic consideration is not as to what sort of opportunities other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color. The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State. The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right. By the operation of the laws of Missouri a privilege has been created for white law students which is denied to negroes by reason of their race. The white resident is afforded legal education within the State; the negro resident having the same qualifications is refused it there and must go outside the State to obtain it. That is a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination.

* * * *

"Nor can we regard the fact that there is but a limited demand in Missouri for the legal education of negroes as excusing the discrimination in favor of whites. We had occasion to consider a cognate question in the case of *McCabe v. Atchison, Topeka and Santa Fe Railway Co., supra.* There the argument was advanced, in relation to the provision by a carrier of sleeping cars, dining and chair cars, that the limited demand by negroes justified the

State in permitting the furnishing of such accommodations exclusively for white persons. We found that argument to be without merit. It made, we said, the constitutional right 'depend upon the number of persons who may be discriminated against, whereas the essence of the constitutional right is that it is a personal one. Whether or not particular facilities shall be provided may doubtless be conditioned upon there being a reasonable demand therefor; but, if facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual who is entitled to the equal protection of the laws, and if he is denied by a common carrier, acting in the matter under the authority of a state law, a facility or convenience in the course of his journey which, under substantially the same circumstances, is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.' *Id.*, 235 U. S pages 161, 162, 35 S. Ct. page 71.

"Here, petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other negroes sought the same opportunity.

"It is urged, however, that the provision for tuition outside the State is a temporary one,—that it is intended to operate merely pending the establishment of a law department for negroes at Lincoln University. While in that sense the discrimination may be termed temporary, it may nevertheless continue for an indefinite period by reason of the discretion given to the curators of Lincoln University and the alternative of arranging for tuition in other States, as permitted by the state law as construed by the state court, so long as the curators find it unnecessary and impracticable to provide facilities for the legal instruction of negroes within the State. In that view, we cannot regard the discrimination as excused by what is called its temporary character.

* * * *

"The judgment of the Supreme Court of Missouri is reversed and the cause is remanded for further proceedings not inconsistent with this opinion."

The importance of this judgment is enhanced by the fact that apart from the clause about equal protection of the laws in the Fourteenth Amendment, the U.S.A. Constitution does not expressly provide for equality of educational opportunities for all citizens, irrespective of race. The express provision contained in the Fifteenth Amendment is limited to the franchise: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In this respect, the Constitution of the U.S.S.R. is more liberal, because under Article 123, "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law. Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law." But the Supreme Court of the U.S.S R. has no power to disallow laws and acts which contravene the rights declared. The Presidium of the Supreme Soviet—which is a sort of joint Standing Committee of the Chambers of the Supreme Soviet (the Union Parliament)—interprets the laws of the U.S.S.R. and annuls decisions and orders of the

Governments of the Union and of the Constituent Republics in case they do not conform to law. [Article 49 of the Constitution of the U.S.S.R.]

The following account, taken from the "New York Times", of a very recent American case is of interest in this connection :—

> "The U.S. Supreme Court held on June 3rd (1946) by a six-to-one decision announced by Justice Stanley F. Reed that racial segregation of bus passengers, as authorized by law in 10 States (called 'Jim Crowism' after a negro character in an old negro folk song), was unconstitutional on buses crossing State borders. The Court dealt with the case of Irene Morgan, a negro girl, who, when travelling in a bus going from Virginia to Maryland, had been arrested and fined 10 dollars for refusing to change her seat and sit in the rear marked 'For Coloured Patrons' (as is general in trolley cars, buses, and trains in the South), thus violating the Virginia 'Jim Crowism' statute. The Virginia Supreme Court of Appeal upheld the conviction, and in the hearing before the Supreme Court the State of Virginia defended the segregation law as 'recognition of human nature' arguing that it prevented racial clashes that might endanger public safety. The Supreme Court decided, however, that, there being no Federal Act dealing with the separation of races in inter-State transportation, the Virginian Statute interferes with the freedom of inter-State commerce which required 'uniformity' in the seating arrangements for the different races in inter-State travel, and for this reason was unconstitutional."

It has already been pointed out that the "equal protection" clause, as interpreted by the Supreme Court, does not prevent special legislation for special classes provided the classification is not arbitrary. It has also been pointed out that the task of deciding whether the clause, in a given case, is arbitrary or not is not easy. An illustration of this difficulty has already been given in the matter of anti-Trust laws ; a few others in the sphere of taxation may now be mentioned. In 1935, in the case *Stewart Dry Goods Co. v. Lewis* (294 U.S. 550), the Supreme Court held *invalid* a Kentucky law imposing a graduated tax upon annual gross sales of retail merchants ranging from 1/20 per cent upon the first $400,000 of gross sales to 1 per cent on sales over $1,000,000. In the language of the Court, "The law arbitrarily classifies these vendors for the imposition of a varying rate of taxation, solely by reference to the volume of their transactions, disregarding the absence of any reasonable relation between the chosen criterion of classification and the privilege the enjoyment of which is said to be the subject taxed."

But in the previous year (1934), in *Fox v. Standard Oil Co. of New Jersey* [294 U.S. 87], the Court had, by a majority of 5 to 4, *upheld* a West Virginia graduated tax running from $2 for one store to $250 for each store in excess of 75, saying that a series of gasoline stations maintained in a single ownership has the benefit of chain organization and that therefore the graduation of the tax according to the number of stores owned was not arbitrary. Again, in 1940, in *Madden v. Kentucky* [309 U.S. 83] the Court, with two dissentient Judges, *upheld* a Kentucky statute imposing on its citizens an annual *ad valorem* tax on their deposits in banks *outside the State* at the rate of 50 cents per 100 dollars and on their deposits in banks *within the State* at the rate of 10 cents per 100 dollars. This had been attacked on the ground, among others, that it discriminated between those who deposited their money in Kentucky banks and those who deposited their money in banks outside Kentucky and thus offended against the "equal protection" clause. The

Court observed (1) that in taxation, even more than in other fields, the legislature possesses the greatest freedom in classification, (2) that the presumption of validity attaching to legislation can be overcome only by the most explicit proof that the classification adopted by the legislature was "a hostile and oppressive discrimination against particular persons and classes", and (3) that in this case the treatment accorded to the two kinds of deposits *may have* resulted from the differences in the difficulties and expenses of tax collection.

We may now turn to another of the fundamental rights enunciated in the Constitution of the U.S.A. In the Fifth Amendment, which applies to the Centre, it is declared that no persons shall be deprived of life, liberty or property without due process of law; and in the Fourteenth Amendment, there is a similar declaration applying to the States: "Nor shall any State deprive any person of life, liberty or property without due process of law". A vast volume of case law has gathered round this "due process" clause, of which it has been said that it is "the most important single basis of judicial review today". At first it was regarded only as a limitation on procedure and not on the substance of legislation; but it has now been settled that it applies to matters of substantive law as well. In fact, the phrase "without due process of law" appears to have become synonymous with "without just cause", the Court being the judge of what is "just cause"; and since the object of most legislation is to promote the public welfare by restraining and regulating individual rights of liberty and property, the Court can be invited, under this clause, to review almost any law. The Court has upheld laws providing for compulsory vaccination (1905); for compulsory sterilization of mental defectives (1927); for commitment of persons with a "psychopathic personality" (1940); but not a law forbidding the use of shoddy in the manufacture of mattresses (1926), nor one requiring every pharmacy to be owned by a licensed pharmacist (1928). The usual issue in such cases is whether what is called the "police power" of the State—in other words, the inherent power of every State "to prescribe regulations to promote the health, peace, morals, education and good order of the people" justifies the particular law under consideration. Since there is no certain criterion in these matters, the Court's verdict may vary from time to time. Thus in *Lochner v. New York* [1905, 198 U.S. 45], a New York law forbidding more than 60 hours' work in any week or an average of more than 10 hours per day in bakeries or confectionaries was held unconstitutional as infringing the liberty of the individual without due process of law. The judgment of the majority of the Court (5 to 4) observed :—

"The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion

of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground." But twelve years later, in *Bunting v. Oregon* [243 U. S. 426], the Court, without mentioning the Lochner case, upheld a ten-hour law for factories. Again, in 1923, in *Adkins v. Children's Hospital* [261 U. S. 525], the Court by a narrow majority overthrew an Act of Congress prescribing a minimum wage for women and children in the district of Columbia. But in 1937, in *West Coast Hotel Co. v. Parrish*, the Court, by a bare majority (5 to 4), overruled the Adkins case and upheld a Washington Act authorizing the fixing of minimum wages for women and minors. There has been similar oscillation in regard to laws providing for price-control and Dodd's comment on this line of cases is : " The question is one as to the efficient action of the government, while at the same time protecting the essential rights of the individual. The cases printed below will indicate that the court has wavered from one position to another, and may now be wavering back to its earlier position." [Dodd's " Cases and Materials on Constitutional Law ", Third Edition, *p.* 649].

We are now in a position to realise some of the difficulties of the problem of fundamental rights. To enunciate them in general terms and to leave it to the Courts to enforce them will have the following consequences :—

(1) The Legislatures not being in a position to know what view the Courts will take of a particular enactment, the process of legislation will become difficult.

(2) There will be a vast mass of litigation about the validity of laws and the same law that was held valid at one time may be held invalid at another or *vice versa* : the law will therefore become uncertain.

(3) The Courts, manned by an irremovable judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically-elected legislative body, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant.

As against these disadvantages, there will undoubtedly be the advantage that racial and religious minorities will feel some security. Many European Constitutions contain a declaration of fundamental rights, but there is often no Court with power to pronounce an offending law unconstitutional. Even in Switzerland, where the Federal Court is competent to entertain complaints of violation of the constitutional rights of citizens, the Constitution requires the Court to apply the laws passed by the Federal Assembly. [*See* Article 113 of the Swiss Constitution.]

The difference between the Supreme Court of the United States and the Swiss Federal Court in this respect is explained thus by Adams and Cunningham :—

" Every Judge of the Supreme Court of the United States is bound to treat as void all legislative Acts, whether proceeding from Congress or from the State legislatures, which are inconsistent with the Federal Constitution, or are in excess of the legislative powers which that Constitution confers. The Supreme Court only inquires into the validity of Acts of Congress for the purpose of determining a question brought before it in a legal proceeding.

The Federal Tribunal, on the contrary, cannot inquire into the constitutional character of a law or a resolution of a general nature which has been

adopted by the Federal Assembly, any more than of a treaty ratified by that body. It is bound by the Constitution to accept those laws and resolutions, and to apply them to the cases submitted to its judgment.

The reason is clear. The measures which, after being framed by the Federal Council and adopted by the Federal Assembly, are accepted by the people, either tacitly or through the Referendum, thus obtain the sanction of the Swiss people. Hence the Federal Tribunal must bow to the decision of the people, and regard all such measures as constitutional and inviolable." [" The Swiss Confederation " by Adams and Cunningham, 1889, *pp.* 267, 268.]

The Swiss Federal Court can, however, examine the constitutionality of *cantonal* laws.

The Irish Constitution of 1937 has followed the plan of separating " fundamental rights " from " directive principles of social policy "; the former are, to some extent, enforceable by the Courts, but the latter not at all. The former are set out in Articles 40-44 of the Constitution and the latter in Article 45, which begins thus : " The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas (the Irish Parliament). The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and *shall not be cognisable by any Court under any of the provisions of this Constitution.*" There is no similar provision in Articles 40-44 expressly excluding the jurisdiction of the Courts. Some of the fundamental rights appear to be couched in terms which could be enforced by the Courts : *e.g.*, section 40(6)2° provides that laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious, or class discrimination ; section 44(2)4° prescribes that legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations ; and so forth. Laws contravening these guarantees will doubtless be pronounced *ultra vires*.

But a provision such as " No citizen shall be deprived of his personal liberty *save in accordance with law* " occurring in section 40(4)1° cannot invalidate any law and is really meaningless as a guarantee against oppressive laws after enactment. Possibly it has a moral value and may afford ground for a referendum before the Bill becomes law, for under Article 27, Bills may be referred to the people, if they involve proposals of national importance. There is also a provision in Article 26(1)1° enabling the President, after consulting the Council of State (which is a sort of Privy Council), to refer any Bill to which the Article applies to the Supreme Court for a decision whether the Bill or any specified provision thereof is unconstitutional.

In the Austrian Constitution of 1920, certain fundamental rights were declared [*e.g.*, Article 7 declared " All citizens of the Federation shall be equal before the law. Privileges of birth, sex, position, class and religion are abolished"] and there was also provision for a Constitutional Court, in addition to an Administrative Court and the ordinary Courts of law. The ordinary Courts were not to inquire into the validity of any duly promulgated law [Article 89(1)], but the Constitutional Court was competent in certain circumstances to decide all such questions and to annul any laws, which it adjudged unconstitutional (Article 140) ; in addition, the Constitutional Court was expressly given power to entertain complaints of violation, by any administrative authority, of rights guaranteed under the

Constitution after the matter had been taken through all the stages of administrative appeal. [Article 144.] The net result of these provisions appears to have been that the Constitutional Court could annul a law as unconstitutional at the instance of the Federal Government or a Provincial Government [as the case might be] and to annul any administrative decision as unconstitutional at the instance of any aggrieved individual. The Constitutional Court consisted of a President, a Vice-President, and a number of other members ; the President, the Vice-President, and one half of the other members were elected by the lower House and the other half of the other members by the Upper House of the Federal Legislature. They were to hold office for life. Further provisions as to the organization and procedure of the Constitutional Court were to be prescribed by Federal legislation,

In the next Part of this pamphlet an attempt will be made to analyse the fundamental rights embodied in a few typical Constitutions and to suggest which of them may be included in the new Indian Constitution and what form they should take.

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NATIONAL ARCHIVES OF INDIA

SNO·1644

2 (13)

ALL INDIA CONGRESS COMMITTEE.

(constituent Assembly Section).

Phone : 40358.

6, Jantar Mantar Road,
New Delhi, 3.3.1947.

Dear Friend,

I am enclosing herewith a list of Fundamental Rights & Duties which was prepared for the consideration of the Experts Committee. The Experts Committee however could not meet to consider it. I am sending it to you, as it is, in the hope that you will find it of some interest.

Yours sincerely,

KRKripalani.

Secretary.

NATIONAL ARCHIVES OF INDIA

FUNDAMENTAL RIGHTS AND DUTIES.

1. All citizens irrespective of birth, rank, religion or six are equal before the law and are entitled to full protection of personal liberty.

2. No citizen shall be arrested, except in the act of commiting a crime without warrant issued by a magistrate which ought to be shown at the time of arrest or at the latest within twenty-four hours after. Opportunity shall be given without delay to make legal complaint against such arrest.

Upon complaint made by or on behalf of any person who is being unlawfully detained, the High Court and any and every judge thereof shall forthwith inquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such court or judge without delay and to certify in writing as to the cause of the detention and such court or judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law; provided however that nothing in this article shall be invoked to prohibit, control or interfere with any act of the military forces of the Union during the existence of a state of war or armed rebellion.

3. No punishment shall be inflicted for any action unless the action was designated as punishable before it was committed.

4. No citizen shall be handed over to a foreign power for prosecution or punishment.

5. The dwelling of a citizen is inviolable and shall not be forcibly entered except in accordance with law.

6. Every citizen has the right to express his ideas and opinions freely This right may be limited only by law and solely in the interest of public safety or morality.

NATIONAL ARCHIVES OF INDIA

(15)

7. All citizens are free to assemble peaceably and unarmed and have the right to form associations. These rights may be limited only by law and solely in the interest of public safety and morality.

8. Every citizen has the right to keep and bear arms in accordance with regulations and reservations made by or under Union Law.

9. All citizens without distinction are equally eligible for public offices subject to the possession of qualifications prescribed by law or duly constituted authority. The Union and State Governments may make provision for equitable representation of all sections of the population in public services provided there is no unfair discrimination against or undue patronage in favour of any section.

10. Every citizen is free to choose and change his domicile or place of residence within the territories of the Union. This right may be restricted only by Union Law.

11. Nationality in the Union is acquired and terminated in accordance with Union law. Every Indian resident in any State of the Union has the same rights and duties as the subject of that State.

12. No citizen shall be compelled to render personal service without due compensation and without his full consent except labour imposed as a penalty by judicial decree or by law for a public purpose.

13. Neither the Union nor any State of the Union shall establish, endow or patronise any religion or prohibit the free exercise thereof.

14. Every citizen shall have freedom of conscience and the right freely to profess and practise his religion subject to public order and morality.

15. Every religious organisation shall be free to manage its own affairs, be the owner of or acquire

NATIONAL ARCHIVES OF INDIA

movable or immovable property, administer or dispose of the same, possess or enjoy its revenues and endowments, and maintain institutions for religious, educational or charitable purposes. These rights shall be subject to such restrictions as may be prescribed by law in the interest of public order and morality.

16. The right to propagate religious doctrines and practices not inconsistent with public order and morality and to express views against any such doctrines or practices is guaranteed provided that it is done in a manner not calculated to offend the reasonable susceptibility of persons belonging to any religion or sect.

17. Every person shall be free to change his religious persuasion provided that (a) no one who has not completed the age of 18 shall change his religion without the permission of his parent or guardian, (b) no religious conversion shall be recognised which is brought about by coercion, undue influence or the offering of material inducements, and (c) mass conversions may be regulated by law in the interest of public order and morality.

18. Liberty of the Press is guaranteed subject to such restrictions as may be imposed by law in the interest of public order or morality or to meet a grave emergency.

19. The Press shall not be subject to censorship and shall not be subsidized. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

20. The privacy of correspondence is inviolable and may be infringed only in cases provided by law for the purpose of dealing with a grave emergency.

21. Every citizen has a right to compensation for damage caused by the officials of the Union or a State, whether civil or military, through official action not conforming to law or outside the scope

NATIONAL ARCHIVES OF INDIA

of their duties. The Union or the State is responsible for the damage caused conjointly with the respective offending officials.

22. It shall be the duty of every State of the Union to provide free and compulsory education for all its citizens up to the age of 14 within a period of not more than 10 years from the commencement of this constitution.

23. It shall be the duty of every State of the Union to ensure for all its citizens within a period of not more than 15 years from the commencement of this constitution useful employment on fair wages and protection and assistance in case of old-age, unemployment, sickness or accident.

24. Workers have the right to form unions to protect their interests.

25. No citizen of the Union shall be subject to any special disability or disqualification on the ground of sex. This shall not, however, prevent the imposition of restrictions on the employment of women in occupations calculated to affect their health or functions of motherhood.

26. No title other than a title indicating an office or an academic distinction shall be conferred on any citizen by the Union or any State. No citizen shall accept any title or decoration from a foreign State. All such titles and decorations existing at the commencement of the Union are hereby cancelled.

27. Mem Members of a community within a State of the Union not speaking the language of the State shall not be restricted by way of legislation or administration in the free development of their language and culture.

28. In towns and districts of any State where a considerable proportion of citizens speak a language other than the language of the State, facilities shall

NATIONAL ARCHIVES OF INDIA

(18)

be provided within the limits laid down by law to enable the children of such citizens to receive instructions in their own mothertongue. Where any sums of public money are set aside for educational purposes in the State or municipal budgets or otherwise, a due share in the allocation of such sums shall be accorded to such linguistic minorities.

29. Every citizen has the right to choose his business, profession or calling subject to conditions laid down by law for the conduct of such business, profession or calling. Children below the age of 14 shall not be employed in mines and factories.

30. The law shall decide what kinds of property and within what limits may be in the exclusive ownership of the State upon grounds of public utility and also what limitations may be imposed on the rights of citizens and of corporations recognized by law to exploit the land, waters, minerals and other natural resources.

31. Every State shall have the right to regulate, alter or abolish land tenures so as to ensure the productive use of the land and reasonable livelohood for the tiller of the soil.

32. Subject to the above two clauses, the right to property is guaranteed to all citizens, corporations and autonomous bodies and no such right shall be taken away without compensation prescribed by law.

33. It is the duty of every citizen to safeguard and protect public property and to prevent its misuse or misappropriation, not to evade the taxes lawfully imposed and to help in the prevention of such evasion.

34. It is the duty of every citizen of the Union to defend the Union and every part thereof and perform military or police duty when called upon to do so by law or constituted authority.

35. All laws, customs and usages existing at the commencement of this constitution which recognizes untouchability or

NATIONAL ARCHIVES OF INDIA

inferiority by birth of any citizen shall be deemed to have been repealed or abolished to the extent of such recognition.

36. No public authority including a civil or a criminal court shall in carrying out the functions and duties e trusted to it by any law recognize any law, custon or usage imposing a liability or disability on any person on the ground that he belongs to an inferior or impure caste or menial class.

37. Notwithstanding any custom or usage or prescription, all Hindus without any distinction of caste or denomination shall have right of access to and worship in all public Hindu temples, choultries, dharamsalas, bathing ghats, and other religious place. Rules of personal purity and conduct prescribed for admission to and worship in these religious places shall in no way discriminate against or impose any disability on any person on the ground that he belongs to an impure or inferior caste or menial class.

38. It shall be the duty of every State of Union to make a periodic list of all the classes in the State who are specially backward in education or social development, and provide special educational and cultural facilities for their speedy advancement. In the annual budget a reasonable amount will be set apart for this purpose and administered by a special authority whose appointment, powers and functions are defined by law. The provision of these facilities shall be in addition to those provided for the community in general to which these classes should have free and equal access.

39. In the settlement, disposal, or aliance of land belonging to any State, the claims of backward classes shall be given preference as far as possible.

40. The aboriginal tribes living in the tribal areas of any State shall be entitled to special protection of their tribal system, their land, their customary life, health and education.

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NATIONAL ARCHIVES OF INDIA

SNO. 1645

(20)

No. CA./18/Cons/47.
CONSTITUENT ASSEMBLY OF INDIA.

From

Sir B.N.Rau,
Constitutional Adviser,
Constituent Assembly of India.

To

All Members of the Central and Provincial Legislatures.

New Delhi, the 17th March, 1947.

Sir,

In order to facilitate the work of framing a new Constitution before June, 1948, it is considered desirable to issue a questionnaire, bearing on the salient features of the Constitution, to all the members of the various Provincial Legislatures and of the Central Legislature and to invite their individual views thereon.

2. Such a questionnaire is annexed to this letter. The questionnaire is divided into five parts, and in each part are set out a certain number of questions bearing on its subject-matter. Brief explanatory notes have been inserted under each question.

3. The questionnaire, as will be noticed, deals only with the Constitution of the Centre. But most of the questions will apply, mutatis mutandis, to the provincial sphere also. You are therefore requested to give your answers both in regard to the Union Constitution and in regard to the Provincial Constitutions.

4. Your answers may kindly be sent so as to reach this office as early as possible and in any case before April 10, 1947, as the matter is very urgent.

5. It is considered unnecessary to frame any questionnaire regarding Group Constitutions until the Sections have decided to set up such Constitutions.

I have the honour to be,

Sir,

Your most obedient servant,

B N Rau

Constitutional Adviser.

NATIONAL ARCHIVES OF INDIA

(21)

CONSTITUENT ASSEMBLY OF INDIA.

QUESTIONNAIRE.

A.

Head of the Indian Union.

1. What should be the designation of the Head of the Indian Union?

[Note: In this and the following notes reference has been made to the constitutions of various countries. But it must be remembered that the United Kingdom and Ireland are not Federations and even South Africa is not a true Federation.

U.S.A. Switzerland Ireland	President.
Canada Australia	The local Executive Head is the Governor General on behalf of His Majesty.
South Africa	The local Executive Head is the Governor General.]

2. How should he be chosen?

[Note: The answer will probably turn on whether the Head of the Indian Union is to be a real Head as in the U.S.A. or merely a nominal Head as in Switzerland. If he is to be a real Head, independent of the Legislature, he may have to be elected otherwise than by the Legislature as in the U.S.A. If he is to be a nominal Head, not independent of the Legislature, he may be elected by the Legislature as in Switzerland. The case of Ireland is peculiar, because the President is elected by the direct vote of the people and yet is to a large extent a nominal Head acting on the advice of Ministers responsible to the Legislature.

U.S.A. The President is elected by an electoral college in which each State has as many electors as it has members in the Congress (i.e. the Federal Legislature, including both Houses), the

NATIONAL ARCHIVES OF INDIA

(22)

electors being elected in each State by adult franchise. This mode of election is presumably due to the theory of the American Constitution that the executive power must be completely separated from the legislative power. An absolute majority is required for election of the President. Where no candidate secures an absolute majority, the House of Representatives elects the President from among the highest three, each State having one vote.

Switzerland. The President is elected annually by the Federal Assembly (i.e., the Federal Legislature, including both Houses) from amongst the members of the Federal Council (Executive), who are also elected by the Federal Legislature.

Ireland. The President is elected by the direct vote of the people (secret voting, on the system of proportional representation by means of single transferable vote).

3. What should be his term of office?

[Note:

U.S.A. 4 years (elected every leap year).

Switzerland. 1 year (annual election).

Ireland. 7 years.

Canada, Australia, South Africa) Customary term of 5 years.]

4. Should he be eligible for re-election?

[Note:

U.S.A. Eligible for re-election: previous to Franklin Roosevelt, convention of not more than two terms. Franklin Roosevelt held office for 4 consecutive terms, the last one interrupted by death.

NATIONAL ARCHIVES OF INDIA

Switzerland. Re-election of the President who is in office is prohibited by the Constitution. By usage, the office rotates among the members of Federal Council.

Ireland. Eligible for re-election to the office once, but only once./

5. Should the office rotate among the different communities in turn? If so, how?

/Note:

U.S.A. No provision.

Switzerland. By usage, the offices of the President and the Vice-President rotate amongst the members of the Federal Council in which the main communities are represented.

Ireland: No statutory provision; but the first President was a Protestant (Dr. Hyde, elected in 1938); the present President is a Roman Catholic./

6. Assuming that the Indian Union is to have a President as its Head, should there be a Vice-President or Vice-Presidents?

/Note:

U.S.A. There is a Vice-President who also presides over the Senate. Method of election is the same as that of the President except that when he fails to secure an absolute majority of the votes of the electors, he is elected by the Senate from among the highest two.

Switzerland. There is one Vice-President elected by the Federal Assembly from amongst the members of the Federal Council.

Ireland. No provision for Vice-President.

NATIONAL ARCHIVES OF INDIA

(24)

U.S.S.R. The Presidium has a President and 16 Vice-Presidents, corresponding to the number of Republics./

7. What should be the term of office of a Vice-President?

/Note:

U.S.A. 4 years (election every leap year).

Switzerland. 1 year.

Ireland. No Vice-President./

8. What should be the functions of the President?

/Note:

U.S.A. The President is the Commander-in-Chief of the Army, Navy and Air Force, receives Ambassadors, etc., and makes treaties subject to the consent of a two-thirds majority of the Senate. He appoints Ambassadors and Consuls, Judges of the Supreme Court and such inferior officers as provided for by law. He recommends measures for the consideration of the Congress. He has an absolute veto over legislation which can only be overcome by a measure being passed by a two-thirds majority of each of the two Houses. He has also, what is called, the "pocket veto", i.e., a measure passed within ten days of the adjournment of the Congress and not assented to by the President is deemed to have lapsed. He may grant reprieves and pardons (except in cases of impeachment) for offences against the State, commute sentences, etc. He is liable to impeachment.

Switzerland. The President has only formal or ceremonial functions, the principal one being that of presiding over the Federal Council. He is in charge of one of the administrative departments.

Ireland. The President, on the nomination of Dail Eireann, appoints the Prime Minister (Taoiseach) or the head of the

NATIONAL ARCHIVES OF INDIA

Government, who, in turn, recommends the appointment of other members of the Cabinet. He summons and dissolves Dail Eireann on the advice of the Prime Minister and in case the Prime Minister has lost the support of the majority in the Dail, the President may, in his absolute discretion, refuse to dissolve the Dail. The President may at any time after consultation with the Council of State convene a meeting of either or both of the Houses, by message or address - which has received the approval of Government - on any matter of national or public importance or address a message approved by the Government to the nation at any time on any such matter. He is the Supreme Commander of all defence forces and all Commissions are held from him. He has a right of pardon and a power to commute or remit punishment. He is liable to impeachment.7

9. What should be the functions of the Vice-President?

/Note:

U.S.A. Presides over the Senate; becomes President if President dies during term of office.

Switzerland. Member of the Federal Council, in charge of an administrative department, and presides over the Council in the absence of the President./

10. Should the President be liable to removal? If so, in what manner?

/Note:

U.S.A. The President is removable from office only by impeachment. The Lower Chamber initiates proceedings and the Senate sits as a court of trial. The President is removed on the majority vote of the Senate sitting as the court of impeachment.

Switzerland. No specific provision.

Ireland. Removable by impeachment. The President may be impeached

(26)

~~for stated misbehaviour~~. A proposal ~~to either House to prefer a charge~~ against the President is entertained when moved in writing by at least 30 members of that House and is adopted when, at least, two-thirds of the total members support it. The other House investigates the charges or causes the charges to be investigated. If it sustains the charge by a two-thirds majority of the total members, the President is removed.7

11. How is a temporary vacancy in the office of the President to be filled?

/Note:

U.S.A. The Vice-President acts as President for the rest of the term.

Switzerland. Apparently the Vice-President acts as President.

Ireland. A Commission consisting of the Chief Justice, the Chairman of Dail and the Chairman of Senate acts for the President. The Commission may act by any two of their number./

B.

Executive.

12. What should be the nature and type of the Union Executive? Should it be of the British type (Parliamentary) or the American type (Non-parliamentary) or the Swiss type (mixed) or any other type?

/Note: From the point of view of practical administration this is perhaps the most important question in the framing of the new Constitution. There are, as indicated in the questionnaire, three main types of Executives. In the British type, the Executive is responsible to the Legislature and has to resign on loss of confidence of the Legislature. In the American type, the Executive is not

NATIONAL ARCHIVES OF INDIA

responsible to the Legislature, each derives its authority from the people direct and is not responsible to the other. In the Swiss type, the Executive is elected by the Legislature for a term of 4 years (which is also the life of the Legislature) and no question of resignation during the term arises. In the Irish Free State Constitution of 1922, we find a fourth type: there was a Ministry of the British type plus certain additional Ministers appointed rather on the Swiss plan - that is to say, they were nominated by the Dail on the recommendation of a special committee, they held office for the term of the Dail, and were responsible only to the Dail. The British type is the one with which we are most familiar in India and its features are well-known. The main features of the Swiss type are (1) it gives all sections a chance of being represented in the Executive, the election being by proportional representation (2) it enables the Ministry to concentrate on the real problems of the country for a fixed term of 4 years without being distracted by motions of no-confidence (3) it ensures a substantial degree of responsibility to the Legislature, inasmuch as the Executive is not only elected by the Legislature but is also subject to its directions. The Irish Free State type had a short life and has been abandoned in the new Irish Constitution, which has adopted the British type.

U.K. and the Dominions. By convention the Executive (Cabinet) is responsible to the Legislature and retains office so long as it enjoys the confidence of the Legislature.

U.S.A. The President is the head of the Federal Executive with a Cabinet of 10 heads of departments called Secretaries, appointed by him, subject to the nominal approval of the Senate and

NATIONAL ARCHIVES OF INDIA

answerable only to him. Executive not responsible to the Legislature. Non-parliamentary.

Switzerland. The Federal Council consists of 7 members elected by the Legislature (by proportional representation) once in 4 years. They are eligible for re-election. Not more than one is elected from the same canton. A mixture of Parliamentary and Non-Parliamentary.

Ireland. Ireland has put into statutory form what in U.K. is based on convention. The government consists of 7 to 15 members appointed by the President. One of them acts as Prime Minister, and another as Deputy Prime Minister. Responsible to Dail Eireann, though the Ministers may be chosen from both the Houses, at most two from the Senate. Parliamentary./

13. If Parliamentary, should there be any special provision to secure a stable Executive?

/Note: The following observations in the Simon-Attlee Report are worth notice. Although they relate to the provincial sphere they are of general application:

"We think that under the conditions which have developed in the Indian provinces, Ministers are too much at the mercy of hostile combinations against them for good work to be done. Ministers need to feel that they are assured of a reasonable period within which their policy may mature and its results may be judged; at present some of them are so much occupied in maintaining their position by securing the temporary support of this or that group of critics or malcontents that it must be very difficult to carry on the main work of ministerial government at all."

Ireland. In the Irish Constitution of 1922 an attempt was made to

NATIONAL ARCHIVES OF INDIA

secure stable administration by providing for Ministers, outside the who retained office even after the Cabinet
Cabinet, had resigned. This experiment was carried out in the first two Dails, but apparently was found unworkable. See note under question No.12 above.

China. In case there is disagreement on any matter between the Legislature on the one hand and the Cabinet supported by the President on the other, the Legislature can make its views prevail over those of the Executive only by passing a measure or proposition by a two-thirds majority of members present.

14. What should be the composition of the Executive? What should be the maximum, if any, of the number of Ministers?

Note:

U.K. No statutory maximum. The number at present in the Cabinet is 20 members including the Prime Minister.

Canada. No statutory maximum; the number at present is 20 members including the Prime Minister.

Australia. There is a statutory maximum of seven until Parliament otherwise provides. The number at present is 19 members including the Prime Minister. Ministers cannot remain in office more than 3 months without being members of one of the Houses of the Legislature.

South Africa. There is a statutory maximum of eleven. Ministers cannot remain in office more than 3 months without being members of one of the Houses of the Legislature.

U.S.A. President with 10 heads of Departments called Secretaries who are answerable only to him. None of these can be a member of either House of the Legislature.

Switzerland. The Federal Council consists of 7 members elected by the

NATIONAL ARCHIVES OF INDIA

two Houses of the Legislature at a joint sitting. None of them can be a member of either House, but all may sit and speak without voting.

Ireland. Consists of 7 - 15 Ministers, selected from among the members of both the Houses, not more than two being selected from the Upper House. All continue to be members of the House from which they were selected.7

15. Should provision be made to secure representation of different communities on the Executive? If so, how?

7 Note:

U.S.A. No provision.

Switzerland. Not more than one member of the Federal Council can be chosen from the same Canton.

Canada. No statutory provision. In considering the claims of various candidates for Ministerial office the Premier has to take into account race, religion and geographical factors. Where the total number was 23, 3 were usually assigned to French Canada and 3 to Ontario; at least 1 was assigned to each of the Provinces of Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia, and a politician of Irish extraction usually represented the English speaking Roman Catholic church.7

16. How should joint responsibility or co-ordination be secured?

7 Note:

U.K. and the Dominions. By convention all the Ministers jointly responsible to the Legislature. They are chosen by the Prime Minister. The Government must be one which can work together and can secure the support of the lower House. The first mark of the Cabinet is united and indivisible responsibility.

NATIONAL ARCHIVES OF INDIA

U.S.A. ~~No responsibility to the Legislature. Co-ordination~~ secured, because all the Secretaries hold office during the pleasure of the President and are answerable to him.

Switzerland. Federal Council is bound by the decisions of the Federal Legislature. The Council arrives at a decision by majority vote. When Council is not unanimous on any matter, it is open to Ministers to speak against each other in the Legislature and this sometimes happens; but when once the Legislature decides the matter, all Ministers loyally carry out the decision. The Legislature may therefore be regarded as the co-ordinating factor in the last resort.

Ireland. The Cabinet is collectively responsible to the Dail Eireann and holds office during its command of majority in the Dail. The statutory provisions follow the British convention./

17. How should the members of the Executive be chosen?

/Note:

U.K. and the Dominions. The choice of the Prime Minister is made by the King, or the Governor-General, as the case may be, and the nature of the choice depends upon the state of parties in the lower House. The Prime Minister chooses his colleagues in the Cabinet.

U.S.A. President (elected by an electoral college) selects his Secretaries subject to the normal approval of the Senate.

Switzerland. The members of the Federal Council chosen by the Federal Legislature at a joint sitting.

Ireland. The President appoints the Prime Minister on the recommendation of Dail and other Ministers on the ~~recommendation of Prime Minister./~~

NATIONAL ARCHIVES OF INDIA

18. What provisions should be made for the removal of the Executive?

/Note:

U.K. and the Dominions. The Cabinet holds office so long as it has the confidence of the lower House. It can be removed by a vote of no-confidence by the lower House.

U.S.A. President may be removed by impeachment; Secretaries are removable by the President.

Switzerland. No specific provision.

Ireland. The Prime Minister and Ministers hold office so long as they have the support of the majority in the lower House. Individual Ministers can be removed from office on the advice of the Prime Minister./

19. What should be the nature of relations between the Head of the Union and the Executive?

/Note:

U.K. The King is merely a formal Head. In all political matters he acts on the advice of the Cabinet. He has certain prerogative powers, namely, (1) the right to dissolve Parliament (2) the right to refuse a dissolution of Parliament and (3) the right to select Prime Minister. These rights are circumscribed by many considerations and are very often of theoretical interest only. There are also certain personal prerogatives which he exercises on his own responsibility.

Dominions. The Cabinet is the de facto Executive. In all political matters the Governor-General acts only on the advice of the Cabinet. He does not preside over the business meetings of the Cabinet, which are summoned in the name of the Prime Minister. The Governor-General acts

NATIONAL ARCHIVES OF INDIA

merely as the constitutional head of the Government advised by the Ministers.

U.S.A. The President is the Head of the Union, as well as the Chief Executive.

Switzerland. The President is the Head of the Union and also a Minister in charge of an administrative department like other Ministers. No special powers, except those of a formal or ceremonial character, vested in him.

Ireland. The President is the titular Head and all laws are promulgated in his name. The President acts with the consent of the Prime Minister and his cabinet except when the Cabinet loses the confidence of the Dail. In that case the President may in his discretion, dissolve the Dail and call for fresh elections. The President is also advised by the Council of State which has the Prime Minister and Deputy Prime Minister among its members./

C.

Legislature.

20. Should the Union Legislature have a Single Chamber or two Chambers?

/Note: Second Chambers are set up for various reasons: e.g., to represent special interests or classes as in Ireland; as a check on hasty and ill-conceived legislation of the lower House as in France; to provide equal representation to the different Constituent Units of a federation as in U.S.A. It may provide for a continuous term of office, only a portion of the members retiring at regular interval as in U.S.A., and the old French Constitution. This secures the representation of past as well as current opinion and helps in

NATIONAL ARCHIVES OF INDIA

maintaining continuity in public policy.

There is ~~also~~ a growing opposition to the Second Chamber for various reasons, viz., (1) it may tend to be reactionary, over-conservative and check urgently-needed but radical reforms, (2) it may be instrumental in delaying legislation, (3) it tends to be undemocratic since it is very difficult to constitute a truly democratic Second Chamber on a different basis from the lower Chamber, (4) it is expensive to the country, and politically-backward countries also lack able statesmen to man a Second Chamber properly.

U.K and the Dominions.	All bicameral (Two Chambers).
U.K.	House of Lords, (Upper House). House of Commons, (Lower House).
Canada.	Senate, (Upper House). House of Commons, (Lower House).
Australia.	Senate, (Upper House). House of Representatives, (Lower House).
South Africa.	Senate, (Upper House). House of Assembly, (Lower House).
U.S.A.	Bicameral : Senate,(Upper House) and House of Representatives,(Lower House).
Switzerland.	Bicameral : Council of States,(Upper House) and National Council ~~Federal Assembly,~~ (Lower House).
Ireland.	Bicameral : Seanad Eireann, (Upper House) and Dail Eireann, (Lower House).

21. If bicameral, how should the two Houses be constituted?

/ Note:

U.K. The British House of Lords is of the traditional type. Most of the members are hereditary peers. In addition to these 16 are elected by the Scottish peers, for the duration of each Parliament. There are also some who are members of the House

35

by virtue of office: the Archbishops and Bishops, and the Law Lords.

House of Commons: Entirely elected.

Canada. Senate (Upper House): Senators nominated for life. There are 24 Senators from each of four territorial divisions: Ontario, Quebec, the Maritime Provinces (including Prince Edward Island), and the Western Provinces.

House of Commons (Lower House): Entirely elected, Quebec returning 65 members and other Provinces in proportion to population relatively to Quebec.

Australia. Senate (Upper House): Entirely elected directly through territorial constituencies. 6 Senators from each State, until Parliament otherwise provides.

House of Representatives (Lower House): Entirely elected; total number of members is as nearly as possible double the number of Senators and is distributed among the States according to population, with a minimum of 5 for any State.

South Africa. Senate (Upper House): Partly elected - each Province electing 8 - and partly nominated (8) by the Governor General in Council.

House of Assembly (Lower House): Entirely elected, the quota for each Province depending upon the number of its European adult Union Nationals.

U.S.A. Senate (Upper House): Constituted on the basis of direct election, each State forming a constituency and electing 2 Senators.

House of Representatives (Lower House): Entirely elected. Under the Constitution, the total number of representatives must not exceed one for every 30,000 of the population but each State shall have

NATIONAL ARCHIVES OF INDIA

at least one representative. The actual average representation at present is only one for every 300,000.

Switzerland. Council of States (Upper House): Each of the Cantonal or half-Cantonal Units is free to determine the mode of election of its representatives. Direct election in 21 Units and election by Cantonal Legislatures in the other 4. Each Canton elects 2 Senators and each half-Canton one.

National Council (Lower House) : Constituted on the basis of direct election. Entirely elected. One member for every 22,000 of the population.

Ireland. Seanad Eireann (Upper House): Out of a total of 60 members, 11 are nominated by the Taoiseach (Prime Minister) and the rest elected through electoral colleges to represent specified functional interests.

Dail Eireann (Lower House): Entirely elected on the basis of direct election. Not less than one member for every 30,000 of the population nor more than one member for every 20,000./

22. What provisions should be made for the adequate representation of different communities and interests?

/ Note:

U.K. Universities are given special representation.

South Africa. 4 elected and 4 nominated to represent native interests in the Upper House. 3 seats allotted in the Lower House for natives of Cape Colony.

U.S.A. No provision.

Switzerland. No specific provision . The system of proportional representation helps to secure the adequate representation

NATIONAL ARCHIVES OF INDIA

~~of different communities.~~

Ireland. Provision made for the representation of functional interests such as "agricultural and allied interests and fisheries" "Labour", "Industry and Commerce" in the Upper House; system of proportional representation for the Lower House.]

23. What should be (a) composition, (b) franchise, (c) electorate, (d) constituencies, (e) methods of election and (f) allocation of seats in respect of the Union Legislature?

(a) Composition:

[Note:

U.S.A. House of Representatives : 435 members at present; under the Constitution the total number must not exceed one for every 30,000 of the population, but each State shall have at least one representative. The actual average representation at present is only one for every 300,000.

Senate : 96 members (2 from each of the 48 States).

Switzerland. National Council (Lower House): Varies according to population (1 member for every 22,000 of the population); present strength - 194 members.

Council of States (Upper House): 44 members (2 members each from 19 full Cantons, 1 each from the remaining 6 half-Cantons).

Ireland. Dail Eireann (Lower House) : Varies according to population (not less than one member for every 30,000 of the population nor more than one member for every 20,000); present strength - 138.

Seanad Eireann (Upper House): 60 members.]

(b) Franchise:

[Note:

U.S.A. For both the Houses, the franchise is the same as for the

NATIONAL ARCHIVES OF INDIA

State Legislature if unicameral, or for the Lower House of the State Legislature if bicameral. Disqualifications on the ground of race, colour or sex forbidden. Universal adult franchise in practice, subject to certain minimum literacy qualification.

Switzerland. Universal adult male franchise for the Lower House. Cantons and half-Cantons free to fix the franchise qualifications for the Upper House.

Ireland. Adult franchise for the Lower House, and indirect election for the Upper House./

(c) Electorates:

/Note: No separate or special electorates in U.S.A. and Switzerland. For Ireland see "Methods of Election"./

(d) Constituencies:

/Note: Single Member constituencies in U.S.A. Multi-member constituencies for the Lower House in Switzerland and Ireland where election is by the method of proportional representation./

(e) Methods of Election:

/Note:

U.S.A. Single-member constituencies for both the Houses, the person getting the largest number of votes being declared elected.

Switzerland. Proportional representation for the Lower House. Each of the Cantons/or half-Cantons free to determine the mode of election for the Upper House. Direct election in 21 Cantonal or half-Cantonal units and election by the Legislatures of the units in the other 4.

Ireland. Proportional representation for the Lower House. For the Upper House election is indirect. Nominations to elected

NATIONAL ARCHIVES OF INDIA

~~Seats are made~~ by recognised functional associations, members of the Lower House, the Prime Minister, and persons who have held the office of the Prime Minister or the President. Election is by an electoral college composed of the members of the Dail Eireann and 7 persons elected by each one of the Councils of the Counties or County boroughs. Voting is by the method of proportional representation by means of single transferable vote./

(f) Allocation of seats:

/Note:

U.S.A. Lower House: 435 seats distributed on the basis of population, not exceeding one per 30,000 inhabitants, but with a minimum representation of one for each State.

Upper House: 96 seats, two Senators per State.

Switzerland. Lower House: One member for every 22,000 inhabitants, but at least one member for each Canton or half-Canton.

Ireland. Lower House: Allocation of seats as between constituencies on the basis of population.

Upper House: Of the 60 members, 11 are nominated by the Prime Minister, 6 are elected by the Universities, and the remaining 43 are elected from five panels of candidates constituted on a vocational basis./

24. What should be the term of the Union Legislature?

/Note:

U.K. Upper House: largely hereditary.

Lower House : 5 years, unless sooner dissolved.

Canada. Upper House : Senators are nominated for life.

Lower House : 5 years.

NATIONAL ARCHIVES OF INDIA

3/4 (40)

Australia. Upper House : Continuous, half retiring every three years, term of membership being six years.

Lower House : 3 years.

South Africa. Upper House : Normal term 10 years.

Lower House : 5 years.

U.S.A. Lower House : Two years.

Upper House : Continuous, one-third retiring every two years, term of membership being six years.

Switzerland. Lower House : 4 years.

Upper House : Each Canton or half Canton free to fix the term of office of its representatives. Varies from 1 to 4 years.

Ireland. Lower House : 7 years, unless sooner dissolved.

A shorter period may be fixed by law.

Upper House : Same as for Lower House./

25. If bicameral, what should be the relative powers of the two Houses? What provision should be made to resolve deadlocks?

/Note:

U.K. Until 1911 the powers of the House of Lords were largely co-extensive with those of the House of Commons. This led to occasional conflicts between the two Houses and finally the powers of the Upper House were curtailed by the enactment of the Parliament Act of 1911. At present, all money bills, so certified by the Speaker of the House of Commons, if not passed by the House of Lords without amendment, become law without their concurrence on the Royal assent being signified. Public bills, other than money bills or a bill extending the maximum duration of Parliament, if passed by the House of Commons in three successive sessions, whether of the same

NATIONAL ARCHIVES OF INDIA

Parliament or not, and rejected each time, or not passed by the House of Lords, may become law without their concurrence, on the Royal assent being signified, provided that two years have elapsed between the second reading in the first session of the House of Commons and the third reading in the third session. All bills coming under this Act should reach the House of Lords at least one month before the end of the session.

Canada. The powers of the Canadian Senate are, in law, equal to those of the lower House, excepting that money bills must originate in the House of Commons, and convention requires that they may be rejected but not amended. There are no adequate means to adjust differences between the two Houses: all that the framers of the Constitution have done for this purpose is to provide for the appointment of additional members to the Senate, but since the total strength of the House cannot exceed 104, the maximum number that can be nominated at any time to resolve differences is 8.

Australia. The Senate has equal powers with the House of Representatives in respect of proposed laws except that money bills must originate only in the lower House and cannot be amended by the Senate. The Senate may, however, at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting by message, the omission or amendment of any items or provisions therein. But if there is a deadlock between the two Houses, the Senate can force the dissolution of both the Houses even in regard to money bills. But such dissolution shall not take place within 6 months before the date of the expiry of the House of Representatives by effluxion of time. If the deadlock continues even

NATIONAL ARCHIVES OF INDIA

86 (42)

after the reconstituted Houses meet, it is resolved by a joint sitting of the two Houses. A majority of the total number of the members of the Senate and the House of Representatives is required for the measure to be passed into law.

South Africa. The South African Senate has only limited powers and is essentially a "House of review". Money bills must originate in the House of Assembly only. The Senate may not amend any bill which imposes taxation or appropriates revenue or monies for the services of the government, nor can it amend any bill so as to increase any proposed charges or burdens on the people. If there is a difference of opinion between the two Houses, the constitution provides for a joint sitting, at which a majority of the members present - and not, as in Australia, a majority of the total number of members - is required for the bill to be passed into law. In the case of a money bill, the joint session is convened during the same session; in the case of other bills, during the second session of the Legislature.

U.S.A. The Upper House has all the powers of the Lower House and a few more. Its consent is required for the appointment of Ambassadors, Judges and other high officials and it has the sole power to try all impeachments. Its consent by a two-thirds majority is required for the conclusion of all treaties. A Joint Conference Committee tries to iron out differences, but no provision is made in the Constitution for resolving deadlocks.

Switzerland. The two Houses have co-ordinate powers. In cases of difference of opinion, the respective Committees of the two Houses try to arrive at a compromise, but no provision is made in the Constitution for resolving deadlocks.

NATIONAL ARCHIVES OF INDIA

~~37~~ (43)

Ireland. The Upper House has a suspensory veto for a period of only 90 days in respect of bills other than money bills or urgent bills. If it has the support of one-third of the members of the Lower House, it can ask the President for a referendum to ascertain the will of the people and the President, in consultation with the Council of State, may grant the request. This procedure does not apply to bills proposing to amend the Constitution./

D.

Judiciary.

26. Should there be a separate chain of courts to administer Union Laws?

/Note: In U.S.A., there is a separate chain of Federal Courts, but not in Canada, Australia or Switzerland.

U.S.A. Under the constitution the judicial power of the United States is vested in a Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. There are, at present, two sets of inferior federal courts, namely, the Federal District Courts and the Circuit Courts of Appeal. The country is divided into 83 districts, each State constituting at least one district. From the Federal Courts of these districts there is an appeal to Circuit Courts, which are ten in number. There are also two special courts, namely, the Court of Claims and the Court of Customs Appeals. In certain cases, however, the State courts may be, and are, permitted, in the exercise of the jurisdiction vested in them by the Constitution or laws of their respective States, to deal with causes which are within the federal judicial power. But their jurisdiction in such cases may be qualified by the right of the defendant to have the cause removed before

NATIONAL ARCHIVES OF INDIA

(44) ~~38~~

trial into a Federal Court, or after trial the case may be taken by appeal to the Federal Supreme Court.

Australia. The judicial power of the Commonwealth is vested in a Federal Supreme Court, called the High Court of Australia, and "in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction." The Parliament is also empowered to make laws investing any court of a State with federal jurisdiction. Thus, the constitution has left to the discretion of the Parliament the determination of the degree to which the agency of the State courts is to be utilised for the administration of federal laws. Under the Judiciary Act of 1903, as amended from time to time, the several courts of the States are vested with federal jurisdiction in matters not within the exclusive jurisdiction of the High Court, and there is a right of appeal from these courts to the High Court.

Canada. Under the constitution the Canadian Parliament is empowered to establish a General Court of Appeal for Canada and other courts for the better administration of the laws of Canada. In the exercise of these powers, the Canadian Parliament has set up a Supreme Court of Appeal and an Exchequer Court. In other respects, the administration of justice, including the constitution, maintenance and organisation of civil and criminal courts and civil procedure is a Provincial subject while criminal law and procedure are assigned to the Federation. It may be noted that the Constitution vests the Governor-General with power to appoint the Judges of the superior, district, and county courts of each province, subject to certain exceptions.

NATIONAL ARCHIVES OF INDIA

39
45

E.

Amendments to the Constitution.

27. What provisions should be made regarding amendments to the Constitution?

[Note:

U.K. The British Constitution can be altered by an Act of Parliament.

Canada. The constitution of the Dominion of Canada can only be amended by the Parliament of Great Britain. The Constitution Act itself does not contain any provision regarding such amendments and the Statute of Westminster clearly lays down that it should not be deemed to apply to the repeal, amendment or alteration of the "British North America Acts", 1867 to 1930, or any order, rule or regulation made thereunder. As a matter of form, changes in the constitution have been carried out on addresses from the two Houses of the Dominion Parliament; but this would be difficult if the measure were opposed by one or more of the provincial legislatures. It may be noted that the last of the amendments to the constitution, passed in 1907, was based on the assent of all the provinces: British Columbia demanded better terms but finally agreed to the passing of the measure.

Australia. A proposal to amend the constitution must be passed by an absolute majority in each of the two Houses, and, not less than 2 nor more than 6 months after its passage through both Houses, must be submitted in each State to the electors of the House of Representatives (Lower House). But if an amendment proposed by an absolute majority of one House is not agreed to

NATIONAL ARCHIVES OF INDIA

by the other House, and if after an interval of three months, the amendment is again proposed by the first-mentioned House and again not agreed to by the other House, the Governor-General may submit the proposed amendment to the electors in each State. The proposed amendment cannot become law unless it is approved by a majority of electors voting and by a majority of the States. No amendment (1) diminishing the proportionate representation of any State in either House of Parliament (2) diminishing the minimum number of representatives of a State in the House of Representatives (3) increasing, diminishing, or otherwise altering the limits of a State and (4) affecting the provisions of the constitution in relation to the foregoing matters, may be carried unless the majority of the electors voting in the State interested approve of the proposed law.

Union of South Africa. Except in regard to certain "entrenched" provisions the Union Parliament may by law repeal or alter any of the provisions of the Constitution Act. As regards the excepted provisions, viz.,Section 35 (protection of the Cape native franchise), Section 137 (equality of English, Dutch and Afrikaans languages), Section 152 (amendment of the Constitution Act) proposals to amend them should be passed at a Joint Session of both Houses of Parliament, and at the third reading receive the assent of not less than 2/3rds of the total number of members of both Houses.

U.S.A. In the Constitution of the United States, two methods of originating amendments are provided, and there are also two methods of enacting amendments, when so originated.

NATIONAL ARCHIVES OF INDIA

In the first place, Congress itself may, by a two-thirds majority in each House, draft and propose amendments; in the second place the legislatures of two-thirds of the several States may apply to Congress to call a convention for the purpose of proposing amendments. When amendments are proposed by Congress, or by a constitutional convention, they have to be submitted to the States, and ratified in three-fourths of the States, either by the State legislatures or by State conventions specially elected in each State for the purpose.

Switzerland. There are several methods by which revisions of the Constitution may be originated and ratified. A total revision of the Constitution may be brought about in three ways: (1) The National Council and the Council of States may agree to an amendment, as in the case of an ordinary federal law. The Constitution, as drawn up by the two Houses, must then be submitted to the popular vote, and if it is approved by a majority of the people and by a majority of the Cantons, it becomes law. (2) If one House votes for a total revision and the other refuses its assent, the question is then submitted to the electors in each Canton or half Canton, "Do you wish the Constitution to be revised - Yes or No?" If the majority of electors vote "Yes" in support of a revision, the two Houses are then dissolved, and a new Federal Assembly is elected charged with the work of revising and drafting a new Constitution. When this has been prepared, it is submitted to the popular vote, and if it is approved by a majority of the people and by a majority of the Cantons it becomes law. (3) If 50,000 citizens sign a petition in favour of a total revision of the Constitution, it is the duty of the Executive to submit the question to the electors,

NATIONAL ARCHIVES OF INDIA

"Do you wish the Constitution to be revised--Yes or No?" If a majority of the electors decide in favour of revision, the Federal Legislature has to carry out the popular wish, and revise the Constitution for submission to the people. If on such submission it is approved by the required double majority it becomes law.

There are two methods by which a partial revision or a partial amendment of the Swiss Constitution may be brought about. An amendment may be proposed by the two Federal Houses, as in the ordinary process of legislation. It must then be submitted to and accepted by a majority of the people and by a majority of the Cantons. A demand for the adoption of a new article, or the alteration of an old one, may be made in writing by 50,000 Swiss citizens in the same way as a demand for a total revision. If the Federal Legislature agrees with the demand of the petitioners it proceeds to formulate the required amendment and prepare it for submission to the people. If on the other hand it disagrees with the demand the question is submitted to the people, "Are you in favour of a revision of the Constitution--Yes or No?" If a majority of the people decide in favour of a revision it becomes the duty of the Federal Legislature, acting as a Drafting Committee, to prepare the required amendment for submission to the people. It is then submitted to the popular vote, and if it receives the support of the required statutory majority of people and of Cantons, it becomes law. The final referendum is obligatory in every proposal to amend the Constitution.

NATIONAL ARCHIVES OF INDIA

In reckoning a majority of the Constituent Units, the vote of a half Canton is counted as half a vote.

Ireland. Every proposal for amending the constitution must be initiated in the Lower House as a bill, and after it is passed by both the Houses of the Legislature, submitted to the people for their decision. The bill is held to have been approved by the people if the majority of the votes cast is in favour of its enactment, and it becomes law after it is signed and promulgated by the President in due form.

NATIONAL ARCHIVES OF INDIA

SNO. 1646

No. CA/40-Gen/46.II

CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 3rd January, 1947.

From

H.V.R. Iengar, Esq., C.I.E., I.C.S.,
Secretary.

To

All Members of the Constituent Assembly.

Sir/Madam,

I am directed to enclose, for your information, a copy of the rules for admission to visitors' galleries which have been approved by the President.

I have the honour to be,
Sir/Madam,
Your most obedient servant,

(H.V.R. IENGAR)
SECRETARY.

Enc.1

G.

NATIONAL ARCHIVES OF INDIA

44 (5)

CONSTITUENT ASSEMBLY OF INDIA.

Rules for the admission of Visitors to the Galleries of Constitution Hall.

The President of the Constituent Assembly has been pleased to make the following rules for the admission of visitors to the galleries of Constitution Hall during the public sittings of the Constituent Assembly:-

1. Ordinarily there shall be two classes of Galleries, namely:-

(a) Distinguished Visitors' Gallery;
(b) Public Gallery.

2. Admission to the Distinguished Visitors' Gallery and the Public Gallery shall be by cards to be issued by an order of the Secretary.

3. Applications for admission cards for the Public and the Distinguished Visitors' Galleries must be made to the Secretary, only through Members, for persons who are personally known to them, or, in select cases, for those who have been introduced to Members by persons who are personally known to them.

4. Applications for the admission cards for each day's meeting shall be made separately on the printed forms prescribed for this purpose.

5. Applications for cards should be submitted two clear days before the commencement of the meeting for which the applications are made. Such applications should be handed over to the Notice Office by 5 P.M. on all working days except Saturdays when the latest time for the receipt of the applications will be 1-30 P.M. In exceptional cases, where a pass is required for the wife or near relation of a Member, a clear notice of 24 hours only will be necessary.

6. Applications which do not supply in full the particulars required in accordance with the printed instructions on the application forms will not be complied with.

7. Admission cards to the galleries will be issued for a single meeting and will be available only for that meeting. They will not be transferable and shall in no circumstances be passed on to unauthorised persons. They will be issued subject to the holder observing any conditions endorsed on the admission card.

8. With a view to preventing unauthorised persons from coming into possession of application forms and then submitting them with forged signatures of the members of the Constituent Assembly, blank forms of application for admission cards to the galleries will be given to the Member who asks for these forms, or to his Private Secretary or clerk known to the Constituent Assembly office.

9. In order to eliminate, as far as possible, applications with forged signatures, Members should hand in their applications personally at the Constituent Assembly Notice Office. When this is not possible, Members should send their application forms duly filled in and signed by them through their Private Secretaries or clerks known to the Constituent Assembly office. If they are unable to comply with the ordinary procedure, and send their applications through the post or a messenger not known to the Constituent Assembly Office, they should state the reason (on the back of the applications forms) why the applications were not made in the ordinary way. No action will be taken on such applications if this condition is not observed.

NATIONAL ARCHIVES OF INDIA

10. Admission cards when ready will be handed over either to the Members applying for them or sent to their residential addresses but will NOT in any case be made over to visitors for whom they are required. When cards are delivered at their residences, Members should acknowledge their receipt in the peon book, or if they are out should arrange that some responsible person does so on their behalf.

11. The President may, at any time, suspend these rules for a particular meeting or meetings and substitute any special rules which he may deem fit in their place.

12. The President may, in his discretion, cancel any admission card to any of the Galleries.

13. Any matter not provided for in these rules shall be regulated by the President in his discretion.

G.

NATIONAL ARCHIVES OF INDIA

SNO. 1647

47 (57)

CONSTITUENT ASSEMBLY OF INDIA

CIRCULAR NO. CA/4/ASY/47

New Delhi, the 9th January, 1947.

To

ALL MEMBERS OF THE CONSTITUENT ASSEMBLY

SUBJECT:—*Procedure regarding correction and return of speeches by Members*

SIR,

With a view to securing early and accurate reports of the Proceedings of the meetings of the Constituent Assembly the following instructions are issued for the guidance of Members, who are requested to comply with them as closely as circumstances permit:—

(1) A typed copy of the speeches as taken down by the Official Reporters, will ordinarily be forwarded to them for approval on the same evening on which they are delivered, and *must* be returned, approved, *within* 24 *hours*, to the *Editor of Debates*. In the event of a speech not being returned within that period, the duplicate typed copy will be utilized. Speeches written in whole or in part and read in the Assembly should *invariably* be supplied to the Official Reporters, and such speeches will not again be sent to the Members concerned for approval.

(2) Copies of quotations should *invariably* be supplied to the Reporters, except in cases where the page, etc., of some well-known Report, which is readily available, has been specifically referred to.

(3) In the case of classical quotations, *slokas*, etc., the transliteration in English of the quotation, followed by its meaning (if this has not already been given) should be filled in by the Member when his speech is sent to him for approval.

(4) Members are reminded that the Official Report is intended to be a correct reproduction of the speeches actually delivered by them in the Assembly, and that typed copies of the speeches are sent to them for approval only for the purpose of correcting any inaccuracies, which may have occurred in the process of reporting, *and not for the purpose of improving their literary form or of altering or adding to their substance*. Corrections, if any, should be made *neatly and legibly, and in ink,* as it is difficult to incorporate undecipherable corrections in the printed proceedings.

I have the honour to be,
SIR,
Your obedient servant,
H. V. R. IENGAR,
Secretary of the Constituent Assembly.

NATIONAL ARCHIVES OF INDIA

GIPD—L—111CA—10-1-47—500.

SNO 1648

No. CA/1(2)-Ser/47.

CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 6th January, 1947.

From

H.V.R. Iengar, Esqr., C.I.E., I.C.S.,
Secretary.

To

All Members of the Constituent Assembly.

Subject:- Residential accommodation for members of the Constituent Assembly.

Dear Sir/Madam,

I enclose a copy of a note on the Housing position submitted to the President, which has been approved by him.

2. I am to express regret at the inconvenience that will be caused to those members who were hoping to get houses during the next session of the Constituent Assembly, but will not be able to get any due to the circumstances explained in the note. As members are no doubt aware, the Constituent Assembly has control only over the accommodation available in Constitution House. For other accommodation, it has to compete with the claims of other authorities; and so far as M.L.A. and Council of State quarters are concerned, the rights of members belonging to those bodies have overriding priority.

3. I am accordingly to request that those members (other than Prime Ministers and Ministers of Provinces who are being allotted M.L.A. quarters; and members who are also members of the Central Legislature and are in that capacity in possession of M.L.A. quarters) who occupied M.L.A. quarters including those in Western Court during the last session, but will not be allotted any for this session, should immediately indicate to the Estate Officer by telegram, if possible, their preference (three preferences, first, second and third) of the following accommodation:-

(a) Constitution House.
(b) Pataudi House.
(c) Western Court.
(d) Kotah House.
(e) Private hotels, e.g. Marina, Maidens, Cecil, etc.

Yours faithfully,

(H.V.R. IENGAR)
SECRETARY.

Enc.1

G.

49
(55)

CONSTITUENT ASSEMBLY OF INDIA.

Subject:- Residential accommodation for members of the Constituent Assembly.

For the last session of the Constituent Assembly, it was possible to allot 38 M.L.A. Quarters to the members of the Constituent Assembly other than those who were also members of the Central Legislature. Out of these only 30 were actually occupied as the Muslim League members did not attend. This allotment was possible because it was the off-session period of the Central Legislature, and there was a sufficient gap between the dates fixed for the close of the Constituent Assembly and the commencement of the Legislative Assembly session.

2. These conditions do not apply now. The gap between the close of the next session of the Constituent Assembly and the commencement of the Budget session of the Legislative Assembly may be a bare three days, or even none at all. It is, therefore, not possible to allot houses meant for members of the Legislative Assembly to members of the Constituent Assembly (unless they happen to be also members of the Central Legislature). It is, however, possible to allot some of the houses meant for members of the Council of State to our members, as the Council of State will not meet till the middle of February. Only 15 Council of State quarters are available for allotment to our members for the next session. To this number we had hoped to add 10 more quarters, which are due to be vacated by officers occupying them, as new houses are being built for them elsewhere. It is, however, not advisable to rely on the completion of these new houses in time for the transfer being effected during the next session of the Constituent Assembly. On inspection of the new houses by the Deputy Secretary, he found that they were still in a very incomplete state, and in his opinion, it will take at least a month before they will become habitable. This may make it too late for our purposes.

3. In view of the seriousness of the housing position, a special meeting of members of the House Committee, who are present in Delhi, was held this morning. Unfortunately, only Mrs. Ammu Swaminathan and Mr. Mohanlal Saksena were able to be present. On the position being explained to them, they agreed that the only action possible was:

(a) that the available M.L.A. quarters should be allotted to the Premiers and Ministers of the Provinces as shown in the margin,

Total number of Premiers and Ministers.		18
Bombay does not want.	1	
U.P. which has 4 Ministers wants only 2 quarters.	2	
N.W.F.P. One Minister. Did not stay last time in M.L.A. quarter.	1	4
Actually required.		14

(b) that all the others (including those allotted houses during the last session) should be informed that in view of the position stated above, it will not be possible to allot M.L.A. quarters to any person other than Premiers and Ministers of the Provinces. Those who were not allotted houses will be accommodated, as far as possible, in the same rooms as were given to them during the last session; and those who were allotted houses should be asked to indicate their preference from the accommodation available in Constitution House, other Hostels and Hotels. Details of this will be indicated to them.

P.T.O.

NATIONAL ARCHIVES

(c) The one quarter left over under (a) above, and the 10 quarters (mentioned in para. 2 above), if available in time, shall be allotted to persons who have a special claim on them due to physical infirmity or illness.

4. If the President approves, the members concerned will be informed in terms of this note.

Hon'ble the President.

Sd/- H.V.R. Iengar.
Secretary.
4-1-1947.

Yes.
Sd/- R.Prasad.
5/1/47.

G.

NATIONAL ARCHIVES OF INDIA

SNO 1649 ST 57

Circular No. CA 2/Ser/46.

CONSTITUENT ASSEMBLY OF INDIA

To

All Members of the Constituent Assembly of India.

New Delhi, the ~~20th~~ 21st October 1946

SUBJECT :—*Travel and other facilities for members of the Constituent Assembly.*

Sir,

With a view to relieve you from unnecessary trouble, as far as possible, in making arrangements for your journeys to and from Delhi for meetings of the Constituent Assembly, we have arranged with MESSRS. GOVAN BROTHERS, LTD., SCINDIA HOUSE, CONNAUGHT CIRCUS, NEW DELHI, to act as our official travel agents for the purchase of tickets, reservation of accommodation in trains and air services, etc.

2. They will also receive Members at the stations, if desired, and provide transport from the station to the place of residence and *vice versa* ; arrange sight seeing trips and provide transport for other purposes in Delhi.

For performing the duties mentioned above in Delhi, they will station a trained man a few days before the Assembly session starts, and till a few days afterwards, at Constitution House (where the bulk of the Members are expected to choose to stay) in order to be in direct touch with the Members and the management of Constitution House.

They will not make any extra charges for all these Services. Members will only have to pay the actual cost of the transport provided.

3. Members who desire to avail themselves of the facilities mentioned above are advised to contact in good time the Head Office of Messrs. Govan Brothers, Ltd., or any of their branch offices at the addresses given below, so that arrangements for their travel, reception, etc., may be made well in advance :—

NEW DELHI . .	Messrs. Govan Bros. Ltd., Passage Deptt., Head Office, Scindia House, Connaught Circus. Telegrams : ' GOVBRO '. Telephone : 7682.
MADRAS . .	Messrs. Govan Bros. Ltd., Passage Deptt., Bharat Buildings, Mount Road. Telegrams : ' GOVBROS '. Telephone : 3745.
BOMBAY . . .	The American Express Company, Inc., Travel Dept., " Navsari Building ", (I Floor), 240, Hornby Road, Post Box No. 507. Telegrams : " AMEXCO ". Telephone : 25295.
CALCUTTA . . .	The American Express Company, Inc., Travel Dept., P. O. Box No. 2311, " Pollock House ", 28, Pollock Street. Telegrams : " AMEXCO ". Telephone : 2096.
KARACHI . . .	The American Express Co., Inc., Travel Dept., P. O. Box No. 533, " Oriental Building ", McLeod Road. Telegrams : " AMEXCO ". Telephone : 3461.
LAHORE . . .	Messrs. Govan Bros. Ltd., 3, Sir Ganga Ram Trust Building, The Mall. Telegrams : "GEOFMANCO" Telephone : 2988.

NATIONAL ARCHIVES OF INDIA

4. The Railway Department (Railway Board) have suggested that it would facilitate the work of the various Railway Administrations if the authorities concerned are given advance notice for reservation of accommodation on railways in good time, and that in case any difficulty is experienced in securing accommodation, the matter should at once be reported to the General Manager of the Railway concerned in the first instance, instead of through the office of the Constitutional Adviser or the Railway Board. This will eliminate delay and permit prompt action being taken to remedy defects.

5. The Railway Administrations have been requested by the Railway Board to extend in your favour the period in advance of actual date of travel within which tickets may be purchased to 30 days, so as to enable you to secure early reservation.

I have the honour to be,

Sir,

Your obedient servant,

H. V. R. IENGAR,

Secretary, Constituent Assembly.

GIPD—S1—30 CA—18-10-46—500.

NATIONAL ARCHIVES OF INDIA

SNO. 1650

No.CA/3/Ser/46
CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi,
the 22nd December, 1946.

From

Khan Bahadur S.G.Hasnain,
Under Secretary.

To

All members of the Constituent Assembly.

SUBJECT:- Ration Cards for Delhi.

Dear Sir/Madam,

I am to invite your attention to para. 4 of this office Circular No. CA/3/Ser/46; dated the 1st November, 1946, and to request that before your departure from Delhi the Ration Cards may be returned to this office for transmission to the Rationing authorities or to the following address direct:

Rationing Office,
Circle No. 15,
3, Aurangzeb Lane,
NEW DELHI.

Yours faithfully,

S.G. Hasnain

(S.G.HASNAIN)
Under Secretary.

NATIONAL ARCHIVES OF INDIA

SNO·1651

CIRCULAR LETTER

No.CA/13/Ser/46.
CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the 6th January 1947.

From

B.F.H.B. Tyabji, Esq,I.C.S.,
Deputy Secretary.

To

All Members of the Constituent Assembly.

Subject:- TRANSPORT FACILITIES FOR MEMBERS OF THE CONSTITUENT ASSEMBLY.

.....

Dear Sir/Madam,

A reference is invited to this Office Circular letter No.CA/13/Ser/46, dated the 19th December, 1946, which explained why the bus service between Constitution House and Council House had to be discontinued. It has since been suggested that good advantage of this service could not be taken by Members as it was arranged rather late in the session, and that it should be restarted for the next Session.

2. As the Transport Coy were put to financial loss on the last occasion, they are reluctant to restart the service, unless they are assured of a reasonable amount of traffic. Will you, therefore, please inform this Office whether, if the service is restarted during the next session, you would like to use it.

I have the honour to be,
Sir/Madam,
Your most obedient servant,

(B.F.H.B.TYABJI)
Deputy Secretary

Hvr/

NATIONAL ARCHIVES OF INDIA

SNO.1652 (61) 55

CONSTITUENT ASSEMBLY OF INDIA

ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Monday, the 28th April, 1947, at 11 a.m.

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1. PRESENTATION OF CREDENTIALS

Members who have not already presented their credentials and signed the Roll of Members may do so.

---

2. MOTIONS

(1) THE HONOURABLE PANDIT JAWAHARLAL NEHRU to move the following Motion:-

* Copy of Report attached.

The Constituent Assembly having taken the * report of its States Committee into consideration resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.

(2) SHRIMATI G. DURGABAI to move the following Motion:-

Resolved that this Assembly do proceed to elect, under sub-rule (2) of rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.

H.V.R.IENGAR
SECRETARY

New Delhi,
April 24, 1947.

NATIONAL ARCHIVES OF INDIA

(62) 56

CONSTITUENT ASSEMBLY OF INDIA.

SUPPLEMENTARY ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Monday, the 28th April, 1947, at 11 a.m.

Presentation of the Report of the Committee appointed by the resolution of the Constituent Assembly of the 25th January, 1947, to examine the scope of Union Subjects -- BY THE HONOURABLE SIR N. GOPALASWAMI AYYANGAR.

New Delhi,
April 25, 1947.

H.V.R.IENGAR
Secretary.

NATIONAL ARCHIVES OF INDIA

57
(63)

CONFIDENTIAL

CONSTITUENT ASSEMBLY OF INDIA.

Report of the Committee appointed to negotiate with the States Negotiating Committee

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, *viz.*

(1) The Hon'ble Pt. Jawaharlal Nehru

(2) The Hon'ble Maulana Abul Kalam Azad

(3) The Hon'ble Sardar Vallabhbhai J. Patel

(4) Dr. B. Pattabhi Sitaramayya

(5) Mr. Shankarrao Deo.

(6) The Hon'ble Sir N. Gopalasawami Ayyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

(*a*) fixing the distribution of the seats in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,

(*b*) fixing the method by which the representatives of the States should be returned to the Assembly,

and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States ; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows :—

"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of that Statement, one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no

compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout.....

"Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it, we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

"Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's Statement specifically says. The Cabinet Mission's Statement said : "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking , those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee ; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest co-operation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, *viz*, that not less than 50% of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50% of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution passed by the Conference is attached (Appendix C). // We pointed out that in regard to two States, *viz*., Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested that a suitable method of electing repreesentatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Gopalaswami Ayyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time, and to report, if necessary, to the two Negotiating Committees.

(66)

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.

JAWAHARLAL NEHRU.

A. K. AZAD.

VALLABHBHAI PATEL.

N. GOPALASWAMI.

SHANKARRAO DEO.

B. PATTABHI SITARAMAYYA.

NEW DELHI;

24th April 1947.

NATIONAL ARCHIVES OF INDIA

APPENDIX A

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1-47

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan ; and declares :—

(*a*) that the following fundamental propositions *inter alia* form the basis for the States' acceptance of the Cabinet Mission's plan—

(*i*) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

(*ii*) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(*iii*) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.

(*iv*) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.

(*v*) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy " Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end " after the interim period. " The void will have to be filled either by the States entering into a federal relationship with the successor Government.....in British India, or failing this, entering into particular political arrangements with it."

(*b*) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His

SF (68)

Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's plan to conduct preliminary negotiatitons on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to it.

(*c*) that while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting—

(*a*) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan ; and

(*b*) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

NATIONAL ARCHIVES OF INDIA

(69) 64

APPENDIX B

NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourths or more counting as one and lesser fractions being ignored. In the case of groups, fractions of more than half have been counted as one, lower fractions being ignored

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided :—

(*a*) that the total representation of the States and/or the groups affected is not disturbed, and

(*b*) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.

ANNEXURE

A

SINGLE STATES

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935 1	Name of State 2	Population in millions. 3	Number of seats in the Constituent Assembly 4
I	Hyderabad	16·33	16
II	Mysore	7·32	7
III	Kashmir	4·02	4
IV	Gwalior	4·00	4
V	Baroda	2·85	3
IX	Travancore	6·07	6
IX	Cochin	1·42	1
X	Udaipur	1·92	2
X	Jaipur	3·04	3
X	Jodhpur	2·55	2
X	Bikaner	1·29	1
X	Alwar	0·82	1
X	Kotah	0·77	1
XI	Indore	1·51	1
XI	Bhopal	0·78	1
XI	Rewa	1·82	2

NATIONAL ARCHIVES OF INDIA

1	2	3	4
XIII	Kolhapur	1·09	1
XIV	Patiala	1·93	2
XIV	Bahawalpur	1·34	1
XVI	Mayurbhanj	0·99	1
	20	61·86	60

B

Frontier Groups

Division	Names of States in the Group	Population in millions		Number of seats in the Constituent Assembly
VI	Kalat	0·25		
	Las Bela	0·07		
	Kharan	0·03	0·66	1
XIV	Khairpur	0·31		
VII	Sikkim	0·12		
XV	Cooch Behar	0·64	0·76	1
XV	Tripura	0·51		
XV	Manipur	0·51	1·23	1
XVII	Khasi States	0·21		
XVII	Amb	0·05		
XVII	Chitral	0·10		
XVII	Dir	0·25	0·67	1
XVII	Swat	0·26		
XVII	Phulra	0·01		
		3·32		4

NATIONAL ARCHIVES OF INDIA

65
(71)

V

C

Interior Groups

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
VIII	Rampur Benares	0·93	1
IX	Pudukottai Banganapalle Sandur	0·49	Included in residuary Group XVII below.
X (13 States)	Bharatpur Tonk Dholpur Karauli Bundi Sirohi Dungarpur Banswara Partabgarh Jhalawar Jaisalmer Kishengarh	2·86	3
XI	Shahpura		
XI (26 States)	Datia Orchha Dhar Dewas (Senior) Dewas (Junior) Jaora Ratlam Panna Samthar Ajaigarh Bijawar Charkhari Chhatarpur Baoni Nagod Maihar Baraundha Barwani Ali Rajpur Jhabua Sailana Sitamau Rajgarh Narsingarh Khilchipur	3.1[illegible]	[illegible]3
XVII	Kurwai		

NATIONAL ARCHIVES OF INDIA

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XII (16 States)	Cutch Idar Nawanagar Bhavnagar Junagadh Dhrangadhra Gondal Porbandar Morvi Radhanpur Wankaner Palitana Dhrol Limbdi Wadhwan Rajkot	3·65	4
XII-A (15 States)	Rajpipla Palanpur Cambay Dharampur Balasinor Baria Chhota Udepur Sant Lunawada Bansda Sachin Jawhar Danta	1·69	2
XIII	Janjira Jafrabad		
XIII (14 States)	Sangli Savantvadi Mudhol Bhor Jamkhandi Miraj (Senior) Miraj (Junior) Kurundwad (Senior) Kurundwad (Junior) Akalkot Phaltan Jath Aundh Ramdurg	1·56	2
XIV (14 States)	Kapurthala Jind Nabha Mandi Bilaspur Suket Tehri-Garhwal Sirmur Chamba Faridkot Malerkotla Loharu	2·70	3
XVII	Kalsia Bashahr		

NATIONAL ARCHIVES OF INDIA

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XVI (25 States)	Sonepur, Patna, Kalahandi, Keonjhar, Dhenkanal, Nayagarh, Talcher, Nilgiri, Gangpur, Bamra, Seraikela, Baud, Bonai	4·25	4
XVII	Athgarh, Pal Lahara, Athmalik, Hindol, Narsingpur, Baramba, Tigiria, Khandpara, Ranpur, Daspalla, Rairakhol, Kharsawan		
XVI-A (14 States)	Bastar, Surguja, Raigarh, Nandgaon, Khairagarh, Jashpur, Kanker, Korea, Sarangarh	2.81	3
XVII	Changbhakar, Chhuikhadan, Kawardha, Sakti, Udaipur		
XVII	All other States including three States mentioned in Division IX, *viz.*, Pudukottai, Banganapalle, and Sandur.	4.26	4
		27.82	29

NATIONAL ARCHIVES OF INDIA

APPENDIX C

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON 2-4-47

1. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rulers and representatives of States on January 29, 1947.

2. It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the States representatives to, the Constituent Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 and on March 1 and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided that such participation is preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating Committees in regard to the fundamental points, and other matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States' Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (*a*) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (*b*) with Interim Government and the competent British Indian authorities in regard to matters referred to in Paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committees and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

OIPD--S2—20 CA—25-4-47—1,000.

Confidential

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE TO THE CONSTITUENT ASSEMBLY

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following :—

A—" Defence " connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and to effective demobilisation after its termination. In particular, " Defence " includes—

(1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units ; the strength, organisation and control of the existing armed forces raised and employed in Indian States ;

(2) Defence industries ;

(3) Naval, Military and Air Force works ;

(4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas ;

(5) Arms, fire arms, ammunition and explosives ;

(6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B—" Foreign Affairs " connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :—

(1) Diplomatic, consular and trade representation ;

(2) United Nations Organisation ;

(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

(4) War and Peace ;

(5) The entering into and implementing of treaties and agreements with other countries ;

(6) Trade and Commerce with foreign countries ;

(7) Foreign loans ;

(8) Naturalisation and aliens ;

(9) Extradition ;

(10) Passports and visas ;

(11) Foreign jurisdiction ;

(12) Admiralty jurisdiction ;

(13) Piracies, felonies committed on the high seas and offences committed in the air against the law of nations ;

(14) Admission into, and emigration and expulsion from, the Union ;

(15) Port quarantine ;

(16) Import and export across customs frontiers as defined by the Union Government ;

(17) Fishing and fisheries beyond territorial waters.

C—The term " Communications " although it is wide enough to cover any connection between places should for the present purposes of the Union, in our opinion, include the following :—

(1) Airways ;

(2) Highways and waterways declared by the Union to be Union highways and waterways ;

(3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers, and goods on such waterways ;

(4) (a) Posts and Telegraphs :

Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.

(b) Union telephones, wireless, broadcasting and other like forms of communication ; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication ;

(5) Union railways ; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers;

(6) Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction ;

(7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein ;

(8) Aircraft and air navigation ; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes ;

(9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft ;

(10) Carriage of passengers and goods by sea or by air ;

(11) Union Meteorological Services ;

(12) Inter-Unit quarantine.

D—The expression " the powers necessary to raise the finances required " for the Union subjects in the Cabinet Delegation's Statement necessarily includes the power to raise finances by taxation and loans. In existing circumstances, we recommend the following sources of revenue for the Union :—

(1) Duties of customs, including export duties ;

(2) Excise duties ;

(3) Corporation tax ;

(4) Taxes on income other than agricultural income ;

(5) Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies ;

(6) Duties in respect of succession to property other than agricultural land

(7) Estate duty in respect of property other than agricultural land ;

(8) Fees in respect of any of the matters in the list of Union powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category :—

(1) Union judiciary ;

(2) Acquisition of property for the purposes of the Union ;

(3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies ;

(4) Census ;

(5) Offences against laws with respect to any of the matters in the list of Union powers ;

(6) Enquiries, surveys and statistics for the purposes of the Union ;

(7) Union Services ;

(8) Industrial disputes concerning Union employees ;

(9) Reserve Bank of India ;

(10) Property of the Union and the revenue therefrom ;

(11) Public debt of the Union ;

(12) Currency, coinage and legal tender ;

(13) All subjects in respect of Union areas ;

(14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the Union of the laws and public acts and records of the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement :—

(1) Insurance ;

(2) Company Laws ;

(3) Banking ;

(4) Negotiable Instruments ;

(5) Patents ; trade marks, trade designs ; copyright ;

(6) Planning ;

(7) Ancient and Historical Monuments ;

(8) Standard Weights and Measures.

Such an arrangement will ensure uniformity, throughout the territories of the Union, in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included Planning in the above list for the reason that although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a co-ordinating machinery to assist them.

6. We recommend the insertion in the constitution of a provision on the lines of Article (*xxxvii*) of Section 5i of the Australian Constitution Act.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.

(Sd.) JAWAHARLAL NEHRU
,, GOVIND BALLABH PANT
,, B. L. MITTER
,, JAIRAMDAS DAULATRAM
,, N. GOPALASWAMI AYYANGAR
,, K. M. MUNSHI
,, V. T. KRISHNAMACHARI
,, B. PATTABHI SITARAMAYYA
,, BISWANATH DAS
,, A. KRISHNASWAMI AYYAR

NEW DELHI;
17*th April*, 1947.

GIPD—NS—17CA—26-4-47 1,000.

NATIONAL ARCHIVES OF INDIA

SNO. 1653

~~75~~
(79)

CONSTITUENT ASSEMBLY OF INDIA

CA 40/ Asy/46.

Council House,
3rd
New Delhi, the ~~8th~~ April, 1947

Dear Sir/~~Madam~~,

During their last session, the Constituent Assembly passed a resolution adjourning their meeting to some date in April to be fixed by the President. I am desired to inform you that the President has fixed the next meeting for Monday, the 28th April at 11 A.M. in the Constitution Hall, Council House, New Delhi.

Yours truly,

(H. V. R. IENGAR)

Secretary.

The Hon'ble Shri Purushottam Das Tandon,

NATIONAL ARCHIVES OF INDIA

SNO. 1654

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No. CA/75/Cons-47.
CONSTITUENT ASSEMBLY.

Council House,
New Delhi, the 14th June, 1947.

I forward herewith a copy of the following papers for your information:-

1. Statement by the British Government dated June 3, 1947.

2. Reforms Secretariat Notification No. F.50/47-R, dated 10.6.47, containing the Announcement by the Governor-General about the procedure to be followed for the purpose of giving effect to paras 5 and 8 of the above Statement.

K.V. Padmanabha

(K.V.Padmanabhan)
Under Secretary.

To
All members of the Constituent Assembly.

N.

NATIONAL ARCHIVES OF INDIA

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PUBLISHED BY AUTHORITY

NEW DELHI, TUESDAY, JUNE 10, 1947

GOVERNMENT OF INDIA

SECRETARIAT OF THE GOVERNOR-GENERAL (REFORMS)

New Delhi, the 10th June 1947

No. F. 50/47-R.—The following Announcement by the Governor General is published for general information.

ANNOUNCEMENT BY THE GOVERNOR-GENERAL

In pursuance of paragraph 21 of the Statement by His Majesty's Government dated the 3rd June 1947, His Excellency the Governor General is pleased to direct that the following procedure shall be followed for the purpose of giving effect to paragraphs 5 to 8 of the Statement:—

(1) The members of the Bengal Legislative Assembly representing for the time being the constituencies specified in Schedules I and II, and the members of the Punjab Legislative Assembly representing for the time being the constituencies specified in Schedules III and IV, shall form the two parts of the Bengal Legislative Assembly and the Punjab Legislative Assembly, respectively, for the purpose of taking the decisions referred to in paragraphs 6 and 8 of the Statement.

(2) The Governor of Bengal shall summon the members forming each such part of the Bengal Legislative Assembly, and the Governor of the Punjab shall summon the members forming each such part of the Punjab Legislative Assembly, to meet on such date, at such time and in such place as he may think fit, for the purpose of taking their decision or decisions in accordance with paragraphs 6, 7 and 8 of the Statement.

(3) The Governor shall appoint one of the members of each such body to preside over its meetings, and also one of the members of either body to preside over the meeting referred to in paragraph 7 of the Statement in the event of such a meeting being held. Every such person shall have a right to vote on any issue before the meeting presided over by him, but shall not have or exercise a casting vote.

(4) Each such body shall have power to act notwithstanding any vacancy in the membership thereof.

(5) The President of each such body shall, at the commencement of its meeting, ascertain if any member demands that the joint meeting referred to in paragraph 7 of the Statement should be held, and shall forthwith communicate the result to the President of the other body. Should there be such a demand from any member, the joint meeting shall be held forthwith at such place as may have been appointed in this behalf by the Governor. Immediately on the conclusion of such joint meeting, the two bodies shall reassemble separately for the purpose of taking their decisions referred to in paragraphs 6 and 8 of the Statement.

(6) Subject to the provisions of paragraphs (3), (4) and (5), each such body shall determine its own procedure.

(7) The President of each such body shall communicate its decision or decisions to the Governor.

SCHEDULE I

Description of Constituency.	Number of Members.
General Urban	
Calcutta North	1
Calcutta East	1
Calcutta West	1
Calcutta Central	1
Calcutta South Central	1
Calcutta South	1
Hooghly *cum* Howrah Municipal	1
Burdwan Division North Municipal	1
24-Parganas Municipal	1
General Rural	
Burdwan Central	2
Burdwan North-West	2
Birbhum	2
Bankura West	2
Bankura East	1
Midnapore Central	2
Jhargram *cum* Ghatal	2
Midnapore East	1
Midnapore South-West	1
Midnapore South-East	1
Hooghly North-East	2
Hooghly South-West	1
Howrah	2
24-Parganas South-East	2
24-Parganas North-West	2
Khulna	3
Jalpaiguri *cum* Siliguri	3
Darjeeling	1
Muhammadan Urban	
Calcutta North	1
Calcutta South	1
Hooghly *cum* Howrah Municipal	1
Barrackpore Municipal	1
24-Parganas Municipal	1
Muhammadan Rural	
Burdwan	1
Birbhum	1
Bankura	1

Description of Constituency	No. of Members
Midnapore	1
Hooghly	1
Howrah	1
24-Parganas South	1
24-Parganas Central	1
24-Parganas North-East	1
Khulna	1
Satkhira	1
Bagerhat	1
Jalpaiguri *cum* Rangpur	1
Women's General Urban	
Calcutta (General)	1
Women's Muhammadan Urban	
Calcutta (Muhammadan)	1
Anglo-Indian	
Anglo-Indian	4
Indian Christian	
Calcutta *cum* Presidency Division	1
Commerce & Industry.	
Bengal National Chamber of Commerce	2
Indian Chamber of Commerce	1
Marwari Association	1
Muslim Chamber of Commerce	1
Landholders	
Burdwan Landholders	1
Labour	
Railway Trade Union	1
Calcutta & Suburbs (Registered Factories).	1
Barrackpore (Registered Factories)	1
Howrah (Registered Factories)	1
Hooghly *cum* Serampore (Registered Factories).	1
Colliery (Coal Mines)	1
Tea Garden Labour (Darjeeling Sadar)	1
University	
Calcutta University	1

SCHEDULE II

All constituencies of the Bengal Legislative Assembly other than the following:—

1. All constituencies specified in Schedule I.
2. All European constituencies
3. The following Commerce and Industry constituencies, namely—

   Bengal Chamber of Commerce,
   Calcutta Trades Association,
   Indian Jute Mills Association,
   Indian Tea Association,
   Indian Mining Association.

SCHEDULE III

Description of Constituency	No. of Members
General Urban	
Southern Towns	1
South Eastern Towns	1
Eastern Towns	1
Amritsar City	1
General Rural	
Hissar South	1
Hansi	1
Hissar North	1
Rohtak North	1
Rohtak Central	1
Jhajjar	1
North West Gurgaon	1
South East Gurgaon	2
Karnal South	1
Karnal North	2
Ambala and Simla	2
Kangra North	1
Kangra South	1
Kangra East	1
Kangra West	1
Hoshiarpur West	2
Una	1
Jullundur	2
Ludhiana and Ferozepur	2
Amritsar and Sialkot	1 (The Caste Hindu Member).
Muhammadan Urban	
Southern Towns	1
South Eastern Towns	1
Eastern Towns	1
Amritsar City	1
Muhammadan Rural	
Hissar	1
Rohtak	1
North West Gurgaon	1
South East Gurgaon	1
Karnal	1
Ambala and Simla	1
Kangra & Eastern Hoshiarpur	1
Hoshiarpur West	1
Jullundur North	1
Jullundur South	1
Ludhiana	1
Ferozepur Central	1
Ferozepur East	1
Fazilka	1
Amritsar	1
Tarn Taran	1
Ajnala	1
Sikh Urban	
Eastern Towns	1
Sikh Rural	
South East Punjab	1
Ambala North	1
Kangra & Northern Hoshiarpur	1
Hoshiarpur South	1
Jullundur West	1
Jullundur East	1
Ludhiana East	1
Ludhiana Central	1
Jagraon	1
Ferozepur North	1
Ferozepur East	1
Ferozepur West	1
Ferozepur South	1
Amritsar North	1
Amritsar Central	1
Amritsar South	1
Women's Constituencies	
SIKH	
Amritsar	1
Landholders	
East Punjab (Non-Union Labour)	1
Central Punjab Landholders	1
Labour	
East Punjab (Non-Union Labour)	1

SCHEDULE IV

All constituencies of the Punjab Legislative Assembly, other than the European Constituency and the constituencies specified in Schedule III, but including the representative of the Scheduled Castes from the Amritsar and Sialkot General Rural Constituency.

V. P. MENON, Reforms Commr.

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3rd June 1947.

77

(83)

STATEMENT BY HIS MAJESTY'S GOVERNMENT.

INTRODUCTION.

1. On February 20th, 1947, His Majesty's Government announced their intention of transferring power in British India to Indian hands by June 1948. His Majesty's Government had hoped that it would be possible for the major parties to co-operate in the working-out of the Cabinet Mission's Plan of May 16th, 1946, and evolve for India a Constitution acceptable to all concerned. This hope has not been fulfilled.

2. The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives of Bengal, the Punjab and Sind as also the representative of British Baluchistan, has decided not to participate in the Constituent Assembly.

3. It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the absence of such agreement, the task of devising a method by which the wishes of the Indian people can be ascertained has devolved upon His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention of attempting to frame any ultimate Constitution for India; this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

THE ISSUES TO BE DECIDED.

4. It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a consequence of this announcement, the Muslim League representatives of those Provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issue whether their Constitution is to be framed:-

(a) in the existing Constituent Assembly; or

(b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly.

When this has been done, it will be possible to determine the authority or authorities to whom power should be transferred.

BENGAL AND THE PUNJAB.

5. The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will, therefore, each be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the Province. For the purpose of determining the population of districts, the 1941 census figures will be taken as authoritative. The Muslim majority districts in these two Provinces are set out in the Appendix to this Announcement.

6. The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements will be made accordingly.

7. Before the question as to the partition is decided, it is desirable that the representatives of each part should know in advance which Constituent Assembly the Province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore, if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the Province as a whole would join if it were decided by the two parts to remain united.

8. In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf of the areas they represent, decide which of the alternatives in paragraph 4 above to adopt.

9. For the immediate purpose of deciding on the issue of partition, the members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim majority districts (as laid down in the Appendix) and non-Muslim majority districts. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these Provinces a detailed investigation of boundary questions will be needed; and, as soon as a decision involving partition has been taken for either Province, a Boundary Commission will be set up by the Governor-General, the membership and terms of reference of which will be settled in consultation with those concerned. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors. Similar instructions will be given to the Bengal Boundary Commission. Until the report of a Boundary Commission has been put into effect, the provisional boundaries indicated in the Appendix will be used.

SIND

10. The Legislative Assembly of Sind (excluding the European members) will at a special meeting also take its own decision on the alternatives in paragraph 4 above.

NORTH-WEST FRONTIER PROVINCE.

11. The position of the North-West Frontier Province is exceptional. Two of the three representatives of this

Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the existing Constituent Assembly, it will be necessary to give the North-West Frontier Province an opportunity to reconsider its position. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned in paragraph 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the Provincial Government.

BRITISH BALUCHISTAN.

12. British Baluchistan has elected a member, but he has not taken his seat in the existing Constituent Assembly. In view of its geographical situation, this Province will also be given an opportunity to reconsider its position and to choose which of the alternatives in paragraph 4 above to adopt. His Excellency the Governor-General is examining how this can most appropriately be done.

ASSAM.

13. Though Assam is predominantly a non-Muslim Province, the district of Sylhet which is contiguous to Bengal is predominantly Muslim. There has been a demand that, in the event of the partition of Bengal, Sylhet should be amalgamated with the Muslim part of Bengal. Accordingly, if it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the Assam Provincial Government to decide whether the district of Sylhet should continue to form part of the Assam Province or should be amalgamated with the new Province of Eastern Bengal, if that Province agrees. If the referendum results in favour of amalgamation with Eastern Bengal, a Boundary Commission with terms of reference similar to those for the Punjab and Bengal will be set up to demarcate the Muslim majority areas of Sylhet district and contiguous Muslim majority areas of adjoining districts, which will then be transferred to Eastern Bengal. The rest of the Assam Province will in any case continue to participate in the proceedings of the existing Constituent Assembly.

REPRESENTATION IN CONSTITUENT ASSEMBLIES.

14. If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the scale of one for every million of population according to the principle contained in the Cabinet Mission's Plan of May 16th, 1946. Similar elections will also have to be held for Sylhet in the event of it being decided that this district should form part of East Bengal. The number of representatives to which each area would be entitled is as follows:-

Province.	General.	Muslims.	Sikhs.	Total.
Sylhet District ..	1	2	Nil	3
West Bengal ..	15	4	Nil	19
East Bengal ..	12	29	Nil	41
West Punjab ..	3	12	2	17
East Punjab ..	6	4	2	12

15. In accordance with the mandates given to them, the representatives of the various areas will either join the existing Constituent Assembly or form the new Constituent Assembly.

ADMINISTRATIVE MATTERS.

16. Negotiations will have to be initiated as soon as possible on the administrative consequences of any partition that may have been decided upon:-

(a) Between the representatives of the respective successor authorities about all subjects now dealt with by the Central Government, including Defence, Finance and Communications.

(b) Between different successor authorities and His Majesty's Government for treaties in regard to matters arising out of the transfer of power.

(c) In the case of Provinces that may be partitioned, as to the administration of all provincial subjects such as the division of assets and liabilities, the police and other services, the High Courts, provincial institutions, etc.

THE TRIBES OF THE NORTH-WEST FRONTIER.

17. Agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority.

THE STATES.

18. His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12th May 1946 remains unchanged.

NECESSITY FOR SPEED.

19. In order that the successor authorities may have time to prepare themselves to take over power, it is important that all the above processes should be completed as quickly as possible. To avoid delay, the different Provinces or parts of Provinces will proceed independently as far as practicable within the conditions of this Plan. The existing Constituent Assembly and the new Constituent Assembly (if formed) will proceed to frame Constitutions for their respective territories: they will of course be free to frame their own rules.

IMMEDIATE TRANSFER OF POWER.

20. The major political parties have repeatedly emphasized their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date of June, 1948, for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly, as the most expeditious, and indeed the only practicable way of meeting this desire, His Majesty's Government propose to introduce legislation during the current session for the transfer this year on a Dominion Status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether

or not the part of India in respect of which they have authority will remain within the British Commonwealth.

FURTHER ANNOUNCEMENTS BY GOVERNOR-GENERAL .

21. His Excellency the Governor-General will from time to time make such further announcements as may be necessary in regard to procedure or any other matters for carrying out the above arrangements.

APPENDIX.

The Muslim majority districts of Punjab and Bengal according to 1941 census.

1. The Punjab.

Lahore Division.- Gujranwala, Gurdaspur, Lahore, Sheikhupura, Sialkot.

Rawalpindi Division.- Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur.

Multan Division.- Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan, Muzaffargarh.

2. Bengal.

Chittagong Division.- Chittagong, Noakhali, Tippera.

Dacca Division.- Bakerganj, Dacca, Faridpur, Mymensingh.

Presidency Division.- Jessore, Murshidabad, Nadia.

Rajshahi Division.- Bogra, Dinapur, Malda, Pabna, Rajshahi, Rangpur.

The Viceroy's House,
New Delhi.

3rd June 1947.

AVT/200 copies.

NATIONAL ARCHIVES OF INDIA

SNO. 1654 A

88

NO.CA/6/SER/47
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi,
18th April, 1947.

From

KHAN BAHADUR S.G. HASNAIN,
Under Secretary.

To

ALL MEMBERS OF THE CONSTITUENT ASSEMBLY

SUBJECT:- Ration Cards for Delhi.

Sir,

In order to minimise inconvenience to Members, I am directed to state that the following arrangements have been made with the Controller of Rationing, Delhi, for the issue of Food Ration Cards and Fuel Permits to Members attending the forthcoming session of the Constituent Assembly who want to make their own cooking and living arrangements and will not be staying in Constitution House or other Government hostel or private hotel:-

1. FOOD RATION CARDS :

(i) Members will be required to fill in and sign the application form (Form 'B' enclosed), in advance of their arrival in Delhi and return it to this Office for transmission to the Circle Rationing Officer.

(ii) Members should be careful to fill in all the required particulars in the form and give their full names and correct Delhi addresses.

(iii) The Circle Rationing Officer will arrange to get the Ration Cards prepared and send them to this Office for delivery to Members.

(iv) On arrival in Delhi Members will be required to call at this Office to take over, and sign for, the Ration Cards, or when this is not possible, to send a reliable person, with a written authority, to do so on their behalf.

(v) Members are informed that it is permissible to bring one Week's ration of rationed commodities, viz., Rice, Atta and Sugar, with them, and they are advised to do so to avoid inconvenience on their arrival in Delhi.

(vi) Members, who will obtain their requirements of rationed articles from an authorized establishment, such as a catering institution, hotel, restaurant, etc., need not apply for ration cards for themselves, but they must do so for their servants accompanying them, who will have to make their own arrangements.

2. FUEL PERMITS:

(i) Members desiring to have fuel permits may kindly give their full names and Delhi addresses, and sign the enclosed application for fuel ration (other particulars will be filled in by the Rationing Authorities) and return it to this office for transmission to the Circle Rationing Officer who will arrange to get the fuel permits prepared and send them to this office for delivery to Members.

(ii) Fuel will be available at the shops noted on the permits against payment. The following are the fuel shops in the neighbourhood of the residences for the Members:

NATIONAL ARCHIVES OF INDIA

(i) M/S Moolchand Uday Ram,
F.R.D. 262. (Behind Western Court, New Delhi).

(ii) M/S. Mahabir Coal Co.,
F.R.D.252. (Bengali Mall Market, New Delhi).

Unless indicated otherwise, the Circle Rationing Officer will mark these permits on one of these shops. Should any Member desire to purchase his fuel from any other fuel dealer he may mention the name and the No. of the fuel dealer and the permit will be marked on such a dealer.

(iii) The quota of fuel fixed for each member per month is 7 maunds fire-wood, 1½ maunds charcoal, 4 maunds soft coke and 1½ maunds steam coal. This is the maximum quota available to each member, and they may take the whole or any part of it according to their requirements. It will not be possible to surrender one form of fuel and take another. If in a special case, larger quantities are required you may kindly forward an application which will be transmitted to the Circle Rationing Officer. In the application reasons for which large quantities are required should be shown.

(iv) Permits for fuel will not be issued to Members residing in hotels, and their servants shall make their own arrangements to get fuel from the nearest fuel dealer on production of their Ration Cards, in the ordinary way.

3. At present, arrangements have been made for the ration cards to be valid up to the 157th week of rationing ending on the midnight following the 1st June 1947. If any Member is required to stay beyond 1st June 1947, he may kindly inform this office for making necessary arrangements to get such Ration Cards from the Circle Rationing Officer. It is requested that such intimation should be sent as early as it becomes clear to the Member that he proposes to stay beyond the 1st June 1947.

4. Ration Cards and fuel Permits must be returned to this office by the Members before they leave Delhi.

5. Should any Member require any further assistance in this matter of procuring rationed commodities, he may either write to this office or ring up the Deputy Controller of Rationing on telephone No.6685. The telephone No. of the Circle Rationing Officer No.15 is 7196.

I have the honour to be,
Sir,
Your most obedient servant,

(S.G.HASNAIN)
UNDER SECRETARY

HVR/500 copies
18-4-47.

NATIONAL ARCHIVES OF INDIA

SWO·1655

(90)

84

CONSTITUENT ASSEMBLY OF INDIA.

Meetings of Committees* to be held during the month of April.

Date	Name of the Committee	Time & place
2-4-47	Staff and Finance Committee	9.30 A.M. Room No.28, Council House.
7-4-47	Joint Sub-Committee of the States' Negotiating Committees.	Room No.28, Council House. (Time to be fixed)
14-4-47) 15-4-47) 16-4-47)	Fundamental Rights Sub-Committee	10.30 A.M. Room No.63, Council House.
-do-	Union Powers Committee	To be fixed.
17-4-47	Minorities Sub-Committee	10 A.M. Room No.63, Council House.
18-4-47 (subject to confirmation)	Order of Business Committee	To be fixed
21-4-47	Advisory Committee	10 A.M. Room No.63, Council House.
22-4-47 or 23-4-47 (subject to confirmation)	Steering Committee	To be fixed

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* other than the Excluded Areas Sub-Committee and the Assam Excluded Areas & North-East Frontier Tribal Sub-Committee which are on tour.

Council House,
New Delhi,
29-3-1947.

H.V.R.IENGAR
SECRETARY.

A/29.3.47/160.

NATIONAL ARCHIVES OF INDIA

SNO·1656

No. CA/10/Ser/47.
CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 1st April, 1947.

From

H.V.R. Iengar, Esq., C.I.E., I.C.S.,
Secretary.

To

All Members of the Constituent Assembly of India.

Subject:- Travel and other facilities for members of the Constituent Assembly.

Sir/Madam,

As was arranged during the previous sessions of the Constituent Assembly, Messrs. Govan Brothers will act, in respect of the ensuing session commencing on 28.4.47, as our travel agents for the purchase of tickets, reservation of accommodation in trains and air services, etc.

2. They will also, if desired, receive members at the Railway Station or Air Ports at Delhi and provide transport from the station to the place of residence and vice versa; arrange sight-seeing trips and provide transport for other purposes in Delhi.

For performing the duties mentioned above in Delhi, they will station a trained man a few days before the Assembly session starts, and till a few days after the session adjourns, at Constitution House (where the bulk of the members are expected to stay) in order to be in direct touch with the members and the management of Constitution House.

They will not make any extra charges for these services. Members will only have to pay the actual cost of the transport provided.

3. Members who desire to avail themselves of the facilities mentioned above are advised to contact in good time the Head Office of Messrs. Govan Brothers, Ltd., or any of their branch offices at the addresses given below, so that arrangements for their travel, reception, etc., may be made well in advance:-

NEW DELHI ... Messrs. Govan Bros.,Ltd., Passage Deptt., Head Office, Scindia House, Connaught Circus.
Telegrams: 'GOVBRO'. Telephone: 7682.

MADRAS ... Messrs. Govan Bros.Ltd., Passage Deptt., Bharat Buildings, Mount Road.
Telegrams: 'GOBROS'. Telephone: 3745.

BOMBAY ... The American Express Company, Inc., Travel Deptt., "Navsari Building",(I Floor),240, Hornby Road, Post Box No. 507.
Telegrams: "AMEXCO". Telephone: 25295.

CALCUTTA ... The American Express Company, Inc., Travel Deptt., P.O.Box No. 2311, "Pollock House", 28, Pollock Street.
Telegrams: "AMEXCO". Telephone: 2096.

p.t.o.

KARACHI ... The American Express Co., Inc., Travel Deptt., P.O.Box No. 533, "Oriental Building", McLeod Road.
Telegrams: "AMEXCO". Telephone: 3461.

LAHORE ... Messrs. Govan Bros.,Ltd., 3, Sir Ganga Ram Trust Building, The Mall.
Telegrams: "GEOFMANCO". Telephone: 2988.

4. The Railway Department (Railway Board) have suggested that it would facilitate the work of the various Railway Administrations if the authorities concerned are given advance notice for the reservation of accommodation on railways, and that if any difficulty is experienced in securing accommodation, the matter should at once be reported to the General Manager of the Railway concerned in the first instance, instead of through the office of the Constituent Assembly or the Railway Board. This will eliminate delay and permit prompt action being taken to remedy defects.

5. The Railway Administrations have been asked by the Railway Board to extend in your favour the period in advance of the actual date of travel within which tickets may be purchased to 30 days, so as to enable you to secure early reservation.

I have the honour to be,
Sir/Madam,
Your most obedient servant,

(H.V.R. IENGAR)
Secretary.

G/1/4/47-450 copies.

NATIONAL ARCHIVES OF INDIA

SNO·1657

887

(93)

CONSTITUENT ASSEMBLY OF INDIA.

ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Thursday, the 1st May, 1947, at 9 a.m.

---

1. PRESENTATION OF CREDENTIALS

Members who have not already presented their credentials and signed the Roll of Members may do so.

2. FURTHER CONSIDERATION of the Interim Report of the Advisory Committee on the subject of Fundamental Rights.

3. CONSIDERATION of any business entered in the Orders of the Day for Wednesday, the 30th April, 1947, and not concluded on that day.

New Delhi,
April 29, 1947.

H.V.R. IENGAR
SECRETARY.

AW - 29-4-47 - 850

NATIONAL ARCHIVES OF INDIA

e meeting ... ssembly to be held on Monday, ...th April, 1947, at 11 a.m.

~~88~~

(94)

1. PRESENTATION OF CREDENTIALS

Members who have not already presented their credentials and signed the Roll of Members may do so.

2. MOTIONS

SNO. 1658

(1) THE HONOURABLE PANDIT JAWAHARLAL NEHRU to move the following Motion:-

The Constituent Assembly having taken the * report of its States Committee into consideration resolves that it be recorded.

* Copy of Report attached.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.

(2) SHRIMATI G. DURGABAI to move the following Motion:-

Resolved that this Assembly do proceed to elect, under sub-rule (2) of rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.

H.V.R.IENGAR
SECRETARY

New Delhi,
April 24, 1947.

NATIONAL ARCHIVES OF INDIA

89 (95)

SNO·1659

No. CA/31/47-Cons.
CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 13th July, 1947.

SUBJECT:- PROCEDURE FOR THE ELECTION OF TWO VICE-PRESIDENTS.

Dear Sir,

I forward herewith for the use and guidance of the members a copy of the procedure prescribed by the Hon'ble the President for the election of two Vice-Presidents of the Assembly.

Yours truly,

(K.V.PADMANABHAN)
UNDER SECRETARY

H. To
All Members of the Constituent Assembly.

NATIONAL ARCHIVES OF INDIA

(96) 90

Procedure for election of two Vice-Presidents of the Constituent Assembly.

1. At any time before 5 p.m. on the day preceding the date fixed by the President for the election of the two Vice-Presidents, any member may nominate not more than two members for election by delivering to the Secretary the nomination papers signed by himself as proposer and by a third member as seconder, and stating in each case -

(a) the name of the member nominated, and

(b) that the proposer has ascertained that such member is willing to serve as Vice-President if elected.

2. Any member who has been nominated may withdraw his candidature at any time before the Assembly proceeds to hold the election.

3. On the date fixed for an election, the President shall read out to the Assembly the names of the members who have been duly nominated and have not withdrawn their candidature together with their proposers and seconders, and, if there are only two such members, shall declare them to be duly elected. If there are more than two such members, the election of the Vice-Presidents shall be held by ballot.

Explanation.- For the purpose of ballot, every member shall have two votes, but not more than one vote shall be given to any one candidate.

4. For the purposes of paragraph 3 a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not, before the reading out of the names by the President, signed the Roll of Members.

5. Where there are more than two candidates for election, the two candidates to whom the largest number of valid votes has been given shall be declared elected.

6. Where at the ballot two or more candidates obtain an equal number of votes and one or more of the candidates has to be excluded from the election, the determination as between the candidates whose votes are equal of the candidate or candidates who are to be excluded shall be by drawing of lots.

H.

NATIONAL ARCHIVES OF INDIA

SNO·1660 (97) 97

CONSTITUENT ASSEMBLY

CIRCULAR No. CA/2/N.O./46

To

ALL MEMBERS OF THE CONSTITUENT ASSEMBLY

New Delhi, the 10th July 1947

SUBJECT :—*procedure regarding Divisions in the Constituent Assembly*

SIR,

I am directed to state for your information and guidance that the following revised procedure has been laid down by the President for taking divisions in the Constituent Assembly.

I. On the conclusion of a debate, the question before the House should be put from the Chair. Those in favour of the motion shall be invited to say 'Aye'. and those against it 'No', and the Chairman shall say 'I think the Ayes (or the Noes) have it'. If this statement of the person presiding goes unchallenged, he shall then say twice 'The Ayes (or the Noes) have it' ; and the question before the House shall be determined accordingly.

II. But if the minority desire a division, they shall challenge the opinion by exclaiming 'The Noes (or the Ayes) have it', whereupon the person presiding, if satisfied that the division is justifiably claimed, shall order a division to be held by uttering the word 'Division'. Upon this order, the Secretary shall cause electric bells to ring in the Notice Office, and in other appropriate rooms and passages in the Council House in order to summon absent members to the Constitution Hall. Immediately after the bells stop ringing, all the outer doors of the Members' Lobby shall be closed, and the Watch and Ward Staff posted at each door with instructions to prevent any entry or exit through these doors until the division is concluded. Then the person presiding shall read the terms of the motion before the House and put the question for a second time. If a division is still demanded he shall say 'Ayes to the Right. Noes to the Left.'

III. According as they wish to vote, Members shall then proceed to the 'Ayes' or 'Noes' lobby, and there pass in single file before the Telling Clerk. On reaching the desk of the Telling Clerk each Member in turn shall call out the division number which is allotted to him for this purpose and which he is requested to commit to memory at the commencement of each session. The Telling Clerk shall then mark off *this number* on the division list, simultaneously calling out name of the Member. In order to ensure that his vote has been properly recorded, the Member should *not* move off until he has clearly heard the Telling Clerk thus call out his name.

IV. When the voting process as described above is completed in the division lobbies the Telling Clerks shall present their division lists to the Secretary who shall count the votes recorded thereon, and present the totals of 'Ayes' and 'Noes' to the person presiding, who shall announce the result to the House. The division is not at an end until the result is so announced. If the numbers of 'Ayes' and 'Noes' are equal the question shall be decided by the casting vote of the person presiding.

V. (a) A member who is unable to go to the division lobby owing to illness may, with the permission of the Chair, have his vote recorded either at his seat in the Assembly Chamber or in the Members' Lobby.

92 (98)

(b) If a member finds that he has voted by mistake in the wrong lobby, he shall be allowed to correct his mistake, provided he brings it to the notice of the Chair before the result of the division is announced.

(c) When the Telling Clerks have brought the division lists to the Secretary's table a member who has not till that time recorded his vote but who then wishes to have his vote recorded may do so with the permission of the Chair.

VI. If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for 'Aye' and for 'No' respectively to rise in their places, and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman, there and then declares the determination of the House, the names of voters will not ordinarily be recorded.

I have the honour to be,

SIR,

Your obedient servant,

H. V. R. IENGAR,

Secretary, Constituent Assembly

GIPD—L 39C Assembly —2-7-47—400

NATIONAL ARCHIVES OF I

SNO. 1661

99

CONSTITUENT ASSEMBLY.

Circular No. CA /2/N.O/46 26th April 1947.

New Delhi, the ~~December 1946~~.

To The Hon'ble Shri Purushotam Das Tandon
13, F. Rd.,

SUBJECT.—*Division number*

SIR,

I am directed to inform you that for the purpose of divisions in the Constituent Assembly the number allotted to you is 107 . This number may kindly be committed to memory and given to the Teller in the Division Lobby.

I have the honour to be,
SIR,
Your obedient servant,
H. V. R. IENGAR,
Secretary, Constituent Assembly.

NATIONAL ARCHIVES OF INDIA

SWO·1662

94 (100)

No.CA/11/Ser/47
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the April,1947.

From:
Khan Bahadur S.G.Hasnain,
UNDER SECRETARY.

To :
All Members of the Constituent Assembly.

SUB: MEDICAL FACILITIES FOR MEMBERS OF THE CONSTITUENT ASSEMBLY.

.....

Dear Sir/Madam,

It has been arranged that with effect from the morning of the 26th April,1947, the Medical Officer-in-Charge of the North Block Secretariat Dispensary, will be available at Constitution House (suite No.77) at 09.00 every morning and at 5 o'clock in the evening for one hour each time to attend to minor ailments of Members of the Constituent Assembly.

Yours faithfully,

S.G.Hasnain

(S.G.Hasnain)
UNDER SECRETARY.

ASW/350 copies.

NATIONAL ARCHIVES OF INDIA

(101) 95

CA/36/Asy/47.
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the _____

From:
K.V.Padmanabhan Esq., M.A.,LL.B.,
Assistant Secretary.

To :
All Members of the Constituent Assembly of India.

SUB: REVISED HANDBOOK FOR MEMBERS OF THE CONSTITUENT ASSEMBLY.

.....

Sir/Madam,

I am directed to forward herewith a copy of the revised 'Hand Book' prepared in this office for the use and guidance of Members of the Constituent Assembly of India.

I have the honour to be,
Sir/Madam,
Your most obedient servant,

K.V.Padmanabhan

(K.V.PADMANABHAN.)
ASSISTANT SECRETARY.

5-4-47.
Copies.

NATIONAL ARCHIVES OF INDIA

CNO. 1663

(102) 96

ADDENDUM

In the "CONSTITUTIONAL PRECEDENTS (First Series)" please substitute the following for the paragraph at the foot of page 1 and the top of page 2 of the Pamphlet on 'Union Subjects (I)'.

"To what extent can foreign trade and commerce be said to be comprised in "foreign affairs"? English practice, in this respect, which we may note for our guidance, is as follows :

The general relations of the United Kingdom with foreign countries, in which economic questions play an important part, are a special responsibility of the Foreign Office ; the trading interest of the United Kingdom is a special responsibility of the Board of Trade ; the financial position of the United Kingdom in relation to foreign countries is a special responsibility of the Treasury. Ultimate responsibility for any matter of major policy is that of His Majesty's Ministers collectively. This is particularly relevent in questions which involve two or more Departments of Government.

The formation of commercial policy towards foreign countries and the conduct of trade negotiations with other Governments are thus primarily the responsibility of the Board of Trade (Commercial Relations and Treaties Department). In addition to sections dealing with general matters, this Department has a number of officers who devote their time to particular countries or groups of countries. They keep in close touch with the relevant geographical and economic departments of the Foreign Office in order to ensure that commercial policy is in line with general foreign policy and also with the Treasury who have an Overseas Finance Department which, like the Commercial Relations and Treaties Department, contains geographical sections with respect to financial questions.

The Foreign Office contains both geographical and general economic departments which are organised to handle economic questions, according to whether they are susceptible of being dealt with on a purely geographical basis or are of a more general character. The Foreign Office departments concerned always consult with the Commerical Relations and Treaties Department of the Board of Trade on matters of commercial concern, and the Overseas Finance Department of the Treasury where financial questions are involved.

There are also a number of other Departments (for instance, Food, Civil Aviation, and Fuel and Power) which are associated in their respective spheres with the three Departments principally concerned in the formation of economic policy towards foreign countries.

Thus, there exists, for each country or group of countries a team of officers in the Foreign Office, Board of Trade and Treasury (and also in other Departments as necessary) who are expert in the general, commercial and financial aspects respectively of our relations with foreign countries. The members of this team work closely together and are in constant touch with each other by correspondence, telephone and meetings. These three Departments thus all play their part in framing policy and make their contribution with respect to their particular sphere of operation.

97 (103)

Mention must also be made of the work of the Export Promotion Department of the Board of Trade. This has taken the place of the Department of Overseas Trade, which was jointly responsible to the Foreign Office and the Board of Trade. As its name indicates, the emphasis of the work of this Department is primarily on the urgent need to expand U. K. exports. Consequently the Export Promotion Department is mainly in contact with the individual traders at home or overseas who are engaged in the actual work of export, rather than with other Government Departments. But in addition to these activities it is also responsible for providing the policy-making Departments with the economic, commercial and in many cases financial data on which policy decisions can be based.

Economic work in foreign countries is conducted through the Commercial Secretariats of United Kingdom Missions abroad, who are responsible to the Foreign Office and are members of the Foreign Service. These officers are the chief sources of intelligence on economic developments in foreign countries and they serve for this purpose the Export Promoting Department of the Board of Trade. At the same time these Commercial Secretariats are responsible for handling trade questions as defined in paragraph 2 with the Governments to which they are accredited, under instructions from the Commercial Relations and Treaties Department of the Board of Trade.

The allocation of responsibility for commercial relations with Canada, Australia, New Zealand, South Africa and Eire follows a similar pattern with the difference that the Dominions Office and not the Foreign Office is generally responsible for relations with those countries. The Trade Commissioners stationed in the British Commonwealth, unlike the commercial secretariats in Foreign countries, are primarily responsible to the Board of Trade. But in the countries mentioned the Senior Trade Commissioner is in each case also the Economic Advisor to the United Kingdom High Commissioner (or Representative) and thus keeps in touch through the latter with the Dominions Office."

GIPD—M5CA—18-4-47—600

SNO.1664 S. Kayab Husain (104) 98

C. TITUENT ASSEMBLY OF INDIA

ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Monday, the 14th July, 1947, at 10 a.m.

---

1. PRESENTATION OF CREDENTIALS

Members who have not already presented their credentials and signed the Roll of Members may do so.

---

2. MOTIONS

(1) SHRI K.M. MUNSHI to move the following Motion:-

Resolved that the Constituent Assembly do proceed to take into consideration the further Report of the Order of Business Committee appointed by the resolution of the Assembly of the 25th January, 1947.

(2) SHRI K.M. MUNSHI to move -

That the following amendments to the Constituent Assembly Rules be taken into consideration:-

Rule 2.- In clause (b), delete the words "Sections or".

Delete clause (f).

Rule 3.- Delete the words "or any Section thereof".

Rule 5.- In sub-rule (2), delete the words "or the appropriate authority in British Baluchistan".

For sub-rule (6) substitute the following:-

"(6) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Provincial Legislative Assembly concerned -

(a) shall appoint by suitable notification a person to be the Returning Officer for the

NATIONAL ARCHIVES OF INDIA

election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election, and

(b) shall also appoint by suitable notification -

(i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;

(ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations;

(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and

(iv) a further date, not later than twentyone days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken."

After sub-rule (6), insert the following new sub-rule:-

"(6)a. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at which the poll shall be taken."

Add the following at the end of sub-rule (9):-

"Where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative

NATIONAL ARCHIVES OF INDIA

Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule".

Rule 10.- Delete the whole of the rule.

Rule 11.- For the words "five Vice-Presidents", substitute "two Vice-Presidents"; and insert the following at the end of this rule:-

"who shall be elected by the Assembly from among its members in such manner as the President may prescribe."

Rule 12.- Delete the whole of the rule.

Rule 13.- For the words "rule 12(1)", substitute "rule 11".

Rule 14.- In sub-rule (2), for the words "an elected" substitute "a".

In sub-rule (2), delete the words "as a whole".

Rule 17.- Delete sub-rule (6).

In sub-rule (8), delete the words "or a Joint Secretary".

Rule 18.- In clause (c), delete the words "Sections and the".

Rule 19.- Delete clause (iii) of sub-rule (1).

In sub-rule (1)(ix), delete the words "or the Sections".

Rule 23.- After Rule 23, insert the following new rule:-

"23-A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its Committees.

(2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the Committee, as the case

NATIONAL ARCHIVES OF INDIA

may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the Committee, as the case may be, till the next day on which it ordinarily sits."

Rule 31.- Delete sub-rule (3).

Rule 35.- Delete both the provisos.

Rule 36.- Delete -

(i) the word "exclusive";

(ii) the words "Union Constituent" wherever they occur; and

(iii) the words "shall be binding on the Sections and".

Rule 41.- In sub-rule (1)(c), delete the words "between the Assembly and the Sections, between the Sections inter se".

Rule 42.- In sub-rule (1)(b), for the word "five", substitute the word "two".

Rule 45.- In sub-rule (2), delete the words "one representing each Governor's Province".

Rule 46.- In sub-rule (1), delete the words "or a Section according as the business of the committee relates to the Assembly or the Section".

Rule 47.- Delete the words beginning with "and the Secretary of any Section etc." to the end of the rule.

Rule 49.- Delete the words "or to the Section concerned, as the case may be,".

Rule 63.- Delete the whole of the rule.

Rule 67.- Delete the words "the Sections and" in the first sentence; and delete the whole of the second sentence.

NATIONAL ARCHIVES OF INDIA

(108) 102

(3) SHRI SATYANARAYAN SINHA to move the following Motion:-

Resolved that this Assembly do proceed to elect two Vice-Presidents in accordance with the provisions contained in the Constituent Assembly Rules.

(4) SHRI SATYANARAYAN SINHA to move the following Motion:-

Resolved that this Assembly do proceed to elect, in the manner required under rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee.

(5) SHRI SATYANARAYAN SINHA to move the following Motion:-

Resolved that this Assembly do proceed to elect, in the manner required under rule 44(3) of the Constituent Assembly Rules, three members to be members of the Credentials Committee.

(6) SHRI SATYANARAYAN SINHA to move the following Motion:-

Resolved that this Assembly do proceed to elect, in the manner required under rule 45(2) of the Constituent Assembly Rules, three members to be members of the House Committee.

(7) SHRI SATYANARAYAN SINHA to move the following Motion:-

Resolved that this Assembly do proceed to elect, in the manner required under rule 40(2) & (5) of the Constituent Assembly Rules, nine members to be members of the Steering Committee.

New Delhi,
July 10, 1947.

H.V.R.IENGAR
SECRETARY

Hvr/

NATIONAL ARCHIVES OF INDIA

(109) 103

CONSTITUENT ASSEMBLY OF INDIA.

ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Tuesday, the 15th July, 1947, at 10 a.m.

---

1. PRESENTATION OF CREDENTIALS

Members who have not already presented their credentials and signed the Roll of Members may do so.

---

2. MOTION

SARDAR VALLABHBHAI PATEL to move the following Motion:-

Resolved that the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April, 1947.

3. Consideration of any business entered in the Orders of the Day for Monday, the 14th July, 1947, and not concluded on that day.

New Delhi,
July 12, 1947.

H.V.R.IENGAR
SECRETARY.

H.

NATIONAL ARCHIVES OF INDIA

(110) 104

No. CA/64/Cons./47.
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 27th June, 1947.

I forward herewith the Report of the Provincial Constitution Committee which will come up for consideration by the Constituent Assembly at its forthcoming session commencing on the 14th July, 1947. The report is provisional. Any changes that the Committee may want to make will be communicated to members of the Assembly as soon as possible.

The Report of the Union Constitution Committee will follow.

H.V.R.Iengar
Secretary.

To
All members of the Constituent Assembly.

N.

NATIONAL ARCHIVES OF INDIA

(111) 105

CONFIDENTIAL.

No. CA.64/Cons/47.
CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 27th June, 1947.

From

The Hon'ble Sardar VALLABHBHAI PATEL,
Chairman, Provincial Constitution Committee.

To

The PRESIDENT,
Constituent Assembly of India.

Sir,

On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April 1947 to report on the principles of a model Provincial Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,
Sir,
Your most obedient servant,

VALLABHBHAI PATEL

CHAIRMAN.

H.

NATIONAL ARCHIVES OF INDIA

CONFIDENTIAL.

CONSTITUENT ASSEMBLY OF INDIA.

PROVINCIAL CONSTITUTION COMMITTEE.

Memorandum on the Principles of a model Provincial Constitution.

Part I.

GOVERNORS' PROVINCES.

Chapter I.

The Provincial Executive.

Governor.

1. For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[Note.- The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

Term of Office.

2. (1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

NATIONAL ARCHIVES OF INDIA

107 (113)

(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4) The Governor shall be eligible for re-election once, but only once.

Casual vacancies.

3. (1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

Age qualifications.

4. Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.

Disputes regarding election.

5. Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

Conditions of Governor's office.

6. (1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his

NATIONAL ARCHIVES OF INDIA

seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Executive authority of Province.

7. The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

Extent of the Executive authority of Province.

8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each Province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[Note.- The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or

NATIONAL ARCHIVES OF INDIA

groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects. /

Council of Ministers.

9. There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

/ Note.- For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matters:-

(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof (clause 15(2) of this Part)

(2) the summoning and dissolving of the Provincial Legislature (clause 20 of this Part)

(3) the superintendence, direction, and control of elections (clause 22 proviso (2) of this Part)

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be

NATIONAL ARCHIVES OF INDIA

elected by the people, so that he is not likely to abuse his "discretionary" powers.7

10. If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.

11. The question whether any, and, if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

Other provisions as to ministers.

12. The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

Conventions of responsible Government to be observed.

14. In the appointment of his minsters and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in

NATIONAL ARCHIVES OF INDIA

Schedule.....; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[Note.- Schedule..... will take the place of the Instrument of Instructions now issued to Governors.]

Special responsibilities of Governor.

15. (1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

Advocate-General for Province.

16. (1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the

NATIONAL ARCHIVES OF INDIA

Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

Conduct of business of Provincial Government.

17. All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

Rules of Business.

18. The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

Chapter II.

The Provincial Legislature.

Constitution of Provincial Legislatures.

19.(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall, in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative Assembly shall be on the basis of adult

NATIONAL ARCHIVES OF INDIA

suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:-

(a) The total numerical strength of the Upper House should not exceed 25 per cent of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:-

one-half to be elected by functional representation on the Irish model;

one-third to be elected by the Lower House by proportional representation;

one-sixth to be nominated by the Governor on the advice of his ministers.

[Note.- Under the existing Constitution, Madras, Bombay, Bengal, the U.P., Bihar and Assam have 2 Houses and the rest 1. It was agreed that the members of the Constitutent Assembly from each Province

NATIONAL ARCHIVES OF INDIA

should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women.7

Composition of Provincial Legislatures etc.

20. The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc. shall be on the lines of the corresponding provisions in the Act of 1935.

Language.

21. In the Provincial Legislature, business shall be transacted in the Provincial language or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

Franchise for the Provincial Legislature.

22. The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,

(a) the delimitation of territorial constitutencies;

(b) the qualifications for the franchise and the preparation of electoral rolls;

NATIONAL ARCHIVES OF INDIA

45 (121)

(c) the qualifications for being elected as as a member of either House;

(d) the filling of casual vacancies in either House;

(e) the conduct of elections under this Constitution and the methods of voting thereat;

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of or in connection with such elections;

(i) matters ancillary to any such matter as aforesaid:

Provided

(1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;

(2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.

Chapter III.

Legislative powers of the Governor.

23.(1) If at any time when the Provincial Legislature is not in session, the Governor is

NATIONAL ARCHIVES OF INDIA

satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance -

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or, if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void.

Note.- The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Provincial Legislature. In

NATIONAL ARCHIVES OF INDIA

48 (123)

1925, Lord Reading found it necessary to make an ordinance abolishing the cotton excise duty when such action was immediately and imperatively required in the interests of the country. The Governor who is elected by the people and who has normally to act on the advice of ministers responsible to the Legislature is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.

Chapter IV.

Excluded and Partially Excluded Areas.

[The provisions of this Chapter cannot be framed until the Advisory Committee has reported.]

Part II.

The Provincial Judiciary.

1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted mutatis mutandis; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule ..... .

NATIONAL ARCHIVES OF INDIA

3. The emoluments and allowances of the judges shall not be diminished during their term of office.

Part III.

Provincial Public Service Commission and Provincial Auditor-General.

Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

Part IV.

Transitional Provisions.

1. Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, mutatis mutandis, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

[Note.- These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes

NATIONAL ARCHIVES OF INDIA

into force.7

3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.

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NATIONAL ARCHIVES OF INDIA

CONSTITUTIONAL PRECEDENTS

(THIRD SERIES)

PAMPHLET NO. 3:- Head of State.

SNO:1665

(126)

ARCHIVES

HEAD OF THE STATE

By " Head of the State " is meant the Supreme Executive Authority of the State. It is now well recognized that every State must have such a Chief Executive. In many cases the King was originally the repository of all powers in the State. He was the law-giver, the executor of the law and the judge. But gradually, one by one, these powers were delegated by him to others and in some cases, he even disappeared. Where he disappeared, the problem arose of having a suitable substitute. Even Cromwell found it necessary to evolve the office of a Lord Protector. The need was particularly felt in the international sphere. There were certain duties, *e.g.*, receiving foreign potentates and ministers, which it was impossible for a body of men, like a Cabinet or a Parliament, to perform simultaneously. Thus the various types of non-hereditary Executives we come across in the present day represent the various attempts made by Constitution makers to instal uncrowned kings in places which were once occupied by crowned ones.

It may be that in certain States in matters official the Head of the State is no more than a distinguished " Rubber Stamp " ; but even a rubber stamp has its use. A familiar test which is, therefore, adopted by text-book writers is to ask whether the Executive is real or nominal. In some cases the real and nominal blend in one person, as in the U. S. A. ; there is then really no nominal Executive. But in the vast majority of cases it is possible to distinguish between the formal Head of the State and the real Executive. We are concerned here more with the nominal or formal Executive. The real Executives of modern Democracies have been dealt with in the pamphlet on 'Democratic Executives ' in Constitutional Precedents (First Series).

Professor J. H. Kraus in " The Crisis of German Democracy ", 1932, (p. 171) says that there are five possible types of State Heads which, named in the sequence of their importance, can be characterized under the following terms :—

(1) The representative head of the State.

(2) The head of the state bureaucracy.

(3) The guardian of the Constitution.

(4) The highest equalising factor in the balance of the state machinery, and

(5) The leader of the people.

This classification reveals the various purposes for which the Head of the State is constituted. The Heads of the different States fall under one or more of these types according to the particular emphasis which the Constitution places upon their functions.

UNITED KINGDOM

In the United Kingdom, there is, as everybody knows, a constitutional monarchy. Most executive authority is legally vested in the King and is exercised in his name. But every official act of the King is done on the responsibility of a Minister. On this is based the doctrine that the King can do no wrong ; for what he does some Minister is held responsible.

The legal position of the Crown has been little affected by the passage of time. It remains nearly the same as in 1872 when Bagehot gave the following startling enumeration of the legal powers of the Crown :—

" The Queen could disband the army (by law she cannot engage more than a certain number of men) ; she could dismiss all the Officers, from the General Commanding-in-Chief downwards ; she could dismiss all the sailors too ; she could sell off all our ships of war and all our naval stores ; she could make a peace by the sacrifice of Cornwall and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a "University "; she could dismiss most of the civil servants ; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the Government, could disgrace the nation by a bad war or peace and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations ".

This passage illustrates the vast reserve of the powers vested in the King of England. The fact that no monarch in his senses would on his own even attempt to exercise these powers is another matter.

The powers of the Crown of the present day are derived from custom and from statute. The functions of the King may be dealt with briefly under three heads : (*a*) non-political ; (*b*) political ; and (*c*) formal.

(*a*) The Crown has been described as the pivot of the "dignified part of the Constitution " and the following claims have been made for the institution of Monarchy : A Monarchy calls forth feelings which no Republic can evoke. It appeals to the sentiments of the people more than any other form of Government. It provides an " intelligible headpiece " and is valuable in excluding competition for the leadership of the society. Above all, the Crown acts as the guardian of the " invisible " Constitution. It " acts as a disguise ", for, " it enables the real rulers to change without heedless people knowing it ".

(*b*) It is not easy to describe the political functions of the Crown. A good deal depends upon the character of the Monarch. The regime of Queen Victoria provides ample evidence to show how an exceptionally capable Sovereign, strong of will and greatly devoted to duty, backed up by the experience gained during a long reign, left a profound impression upon the government of the day. In the words of Gladstone, " The acts, the wishes, the example of the Sovereign in this country are a real power. An immense reverence and tender affection await upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the Constitution."

(*c*) Of the formal prerogatives of the Crown the following are the more important, namely, (*i*) the right of dissolution, *i.e.*, the right to appeal from the Parliament to the people ; (*ii*) the right to refuse a dissolution, i.e., the right to appeal from the Ministry to the Parliament ; and (*iii*) the right to select his Chief Adviser, that is, the Prime Minister. These rights are, no doubt, circumscribed by many considerations, but no one can deny that these rights exist.

Mention may also be made here of three other rights enumerated by Bagehot : the right to be consulted, the right to encourage, and the right to warn. " A King of great sense and sagacity would want ", he wrote, ". no other ". The letters of Queen Victoria afford various instances where this masterful Sovereign exercised all these rights.

CANADA, AUSTRALIA AND SOUTH AFRICA

In each of these Dominions the *de jure* Head of the State is the King of England, but in every Dominion he is represented by a Governor-General.

It may be useful to reproduce here the relevent provisions in the three Constitutions :

Canada

" *Sec.* 9.—The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Sec. 10.—The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated.

Sec. 15.—The Command-in-Chief of the land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen. "

(British North America Act, 1867.)

Australia

" *Sec.* 61.—The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Sec. 68.—The Command-in-Chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative. "

(The Commonwealth of Australia Constitution Act, 1909.)

South Africa

" *Sec.* 8.—The Executive Government of the Union is vested in the King and shall be administered by His Majesty in person or by a Governor-General as his representative.

Sec. 9.—The Governor-General shall be appointed by the King and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty be pleased to assign to him.

Sec. 10.—There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

Sec. 17.—The Command-in-Chief of the naval and military forces within the Union is vested in the King or in the Governor-General as his representative. "

(South Africa Act, 1909.)

Under the old colonial system the Governor-General represented the Crown, that is, the Home Government. He was all powerful. Gradually, just as the power of the King at home was first checked and finally taken over by a Cabinet responsible to the Parliament, so also, the power of the Governor-General in the colonies passed from his hands into the hands of the people of

124 (130)

the colonies. With the history of the transition from the colonial system to the responsible Government of the present day we are not concerned. What has to be noted is that the Governor-General came to occupy in the dominions a position similar to that of the King in England. He represented a mere formal Head of the State. After the Imperial Conference of 1926, the Governor-General in a Dominion ceased to represent the Government of Britain (considered as Cabinet) and became merely a representative of the King, with the result that the Government of the United Kingdom had to appoint another official, called the High Commissioner, in a Dominion to act as a liaison officer between the Dominion and the Home Government.

In Canada and Australia, the Governor-General whenever there is a vacancy in the office, is appointed by the King primarily, if not solely, on the advice of the Dominion Cabinet. But, in South Africa, the Governor-General is appointed on a commission counter-signed by the Prime Minister of the Union and not by a British Secretary of State. The Union Government is thus solely responsible for this appointment. The term of office of the Governor-General in all the three Dominions is 5 years.

The Cabinet is the *de facto* Executive in the Dominion. In all political matters the Governor-General acts only on the advice of the Cabinet. He does not preside over the business meetings of the Cabinet, which are summoned in the name of the Prime Minister. The Governor-General acts merely as the constitutional head of the Government advised by Ministers.

IRELAND

In Ireland there is no Governor-General but a President. When the new Constitution was passed in 1937, all references to the King and in the main to the Governor-General were omitted from it, but the Executive Council was authorized to avail itself, for diplomatic and consular appointments and international agreements, of any organ used for these purposes by other Members of the British Commonwealth, though that term was avoided. Therefore it is rather difficult to define the exact position which Ireland occupies in the British Commonwealth. Mr. De Valera claims that Ireland is a Republic, while His Majesty's Government treats it as part of the British Commonwealth.

The Irish Executive is of the British responsible type, that is to say, it is a parliamentary Executive. The President is therefore a formal Head of the State and, save as otherwise provided in the Constitution, all powers and functions conferred on the President by the Constitution are to be exercised by him only on the advice of the Government of the day.

The President is elected by the people. The electorate is the same as that for the Dail. The election is by secret ballot on the system of proportional representation with the single transferable vote. He holds office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies or resigns or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five Judges. A [illegible] is eligible for re-election to that office but only once. He may not leave the State during his term of office save with the consent of the Government. He may be impeached for stated misbehaviour. A proposal in either House of the Legislature to prefer a charge against the President may not be entertained unless upon a notice of

motion in writing signed by not less than 30 members of that House. An such proposal may be adopted by a House only upon a resolution of that House supported by not less than two-thirds of the total membership thereof When a charge is preferred by one House, the other House is to investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at the investigation of the charge. If, as a result of the investigation, a resolution is passed, supported by not less than two-thirds of the total membership of the House of the Legislature by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, the resolution operates to remove the President from his office.

FRANCE

A brief reference may be made here to the position of the French Presidents both under the old Constitution of 1875, and under the new Constitution which has just been approved by the people of France.

The President under the Constitution of 1875 has been made famous by a classic aphorism of Sir Henry Maine. " There is no living functionary " he wrote, " who occupies a more pitiable position than a French President. The old Kings of France reigned and governed. The constitutional King of England, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern. " This statement was substantially true ; the real Executive in France was the Cabinet and the President was merely a figurehead.

He was elected for seven years, not by the people but by the two Houses of the French Parliament, sitting together as a National Assembly. He was re-eligible for election any number of times. Under the previous Constitute tion the President had been responsible to the Legislature, but the inconvenience and danger of this principle soon became apparent and therefore when the Constitution came to be revised in 1875 he was made " irresponsible " except in the case of high treason. If accused of high treason, the President could be impeached by the Chamber of Deputies, and tried by the Senate. The Senate had the power to order his dismissal and to impose suitable penalties. Save as above, the President was, for the duration of his term, irremovable. In the Executive sphere he could act only through his Ministers who under the Constitution were to countersign every decree of his. His position was, in fact, merely that of " a constitutional King for seven years".

Under France's latest Constitution the President of the Republic will be elected for seven years by the two Houses of the Legislature. Among his powers are the following :

He designates the Prime Minister and confirms the latter's choice of Ministers. He presides over the Council of Ministers, the Council of Magistrates, now less dependent on political parties, and the Supreme Council of National Defence. He confirms the dissolution of the assembly if the Government has been out voted twice within 18 months after the first 18 months of its existence. All his edicts must be countersigned by the Premier and another Minister.

THE WEIMAR CONSTITUTION OF GERMANY

Under the Weimar Constitution of 1919 the Reich President was elected by the whole German people by secret, equal and direct ballot, men and women being entitled to vote. The fathers of this Constitution deliberately discarded the French system of the Parliament electing the President, as such a system was, in the words of Hugo Pruess, "false parliamentarism". According to him, real parliamentarism postulates two organs of State which are on an equal footing, *e.g.*, Parliament and President, and this can only be achieved if the President is elected not by the Parliament but directly by the people.

Any German over 35 years of age may be elected to the Presidency. It was not necessary, as in the U. S. A., for the President to be born on German soil; it was sufficient if he was a German citizen. Nor was there any restrictive provision, as in the old French Constitution, prohibiting a member of one of the reigning families of Germany from becoming the President.

To be elected a President, a candidate had to receive an absolute majority of the votes cast. If at the first election no candidate received a majority of votes, a second ballot was held. This second ballot was not necessarily confined to the two candidates who obtained the highest number of votes in the first ballot; it was even permissible for a candidate to contest the election for the first time at the second ballot. For instance, in 1932, President von Hindenberg was in fact put up as a candidate only at the second ballot.

The term of office of the President was seven years, which was much longer than the term of the Reichstag which, at the most, could extend only to four years. He could be re-elected any number of times, but his term of office could be terminated prematurely by deposition. Such deposition was to be proposed by the Reichstag by a resolution which required a two-thirds majority and was decided by the people. In case the verdict of the popular vote went in favour of the President, he could remain in office for a further term of seven years and the Reichstag was automatically dissolved. The President or any of his Ministers could be impeached for violation of the Constitution or a Reich Law by a two-thirds vote of the Reichstag, the trial being held in a special Court, the Staatsgerichhof. In case of any temporary incapacity of the President, the Chancellor was to act as his constitutional substitute.

The President was the Commander-in-Chief of the army and navy, and represented the Reich in foreign affairs, but a declaration of war could be made only by the Legislature while alliances and treaties required its assent. The President had the Power to appoint and dismiss the Chancellor and Ministers as well as all the officers, Civil and Military. He had the right to pardon in any case decided by the German Supreme Court in the first instance or by any other Court in Germany. In the sphere of legislation he promulgated the Reich Laws. Under certain circumstances he could order a plebiscite to be held and, within the limits of Article 48 of the Constitution, could even legislate. But all his decrees and orders had to be countersigned by a Minister, who thereby accepted responsibility for them. The position of the President was therefore strictly based on the model of a Parliamentary Executive.

SWITZERLAND

The Executive of the Swiss Confederation is a peculiar one. The Constitution provides that the supreme directing and executive power of the Confederation is exercised by a Federal Council composed of seven members. It has been said that the Constitution of the Swiss Republic " confides the executive authority neither to a President nor to a Premier: neither to a Cabinet nor to an autocrat ". The Swiss Executive can be classified neither under parliamentary nor under non-parliamentary executives. In fact, it appears to have succeeded in combining the merits and excluding the demerits of both parliamentary and fixed executive systems. The Federal Council, as the Swiss Executive is called, is a body consisting of seven members who are elected by the two Houses of the Legislature, sitting together as a National Assembly. They are elected at the beginning of each new National Council for the duration of that Assembly, namely, three years. The Federal Council is completely renewed after every general election of the National Council. In the Federal Council power is not concentrated in any one man ; it is held equally among the seven members. There is, as it were, a diffusion of executive power among a body of men. But every year the Federal Assembly nominates one of the members of the Federal Council as the President of the Confederation who presides over the Council and another as the Vice-President of the Council. The outgoing President cannot be elected President or Vice-President for the following year, nor can the same member act as Vice-President for two consecutive years. Usually the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council. The President gets a salary equal to about £60 a year more than each of his colleagues during his term of office.

" By the actual arrangement, the work of the President of the Confederation has been considerably diminished. He is of course still head of a department,which may no doubt be that of foreign affairs, though he can equally direct one of the others, such, for instance, as war or finance. But his presidential functions have been lessened by relieving him of a number of matters of mere administrative procedure, and of the duty of giving numerous audiences to foreign representatives and other persons. He still opens all correspondence addressed to the Federal Council, distributes the business among the different departments, presides at the sittings of the body, and signs the notes and other official correspondence in its name. He still receives foreign representatives on certain occasions, such as the delivery of letters from the head of their country, and the presentation of their letters of credence and recall. He also continues to take the first place, ranking before his colleagues, upon public occasions. It is thus clear that the President of the Confederation has not a tithe of the power entrusted to the President of the United States. He may, indeed, without any disrespect, be likened to the chairman of a board ". (Adams & Cunningham : " The Swiss Confederation ", 1889.)

THE UNITED STATES OF AMERICA

The American President provides a perfect illustration of a non-parliamentary or fixed Executive. According to the Constitution the "executive power shall be vested in the President of the U.S.A.," and "he shall hold Office during the term of four years....together with the Vice-President chosen for the same term ".

The method of election both of the President and the Vice-President is provided for by the Constitution with great precision. "This process of election," wrote Hamilton, "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

The Constitution contemplates that the election should be indirect. It provides first for an electoral college, the members of which are chosen in each State to a number equal to the number of representatives from the State to the two Houses of the Congress. The actual method of choosing these electors is left to the discretion of each State Legislature. All the State Legislatures have directed that the Presidential electors shall be chosen at the polls by the qualified voters of the State. The electors meet in each State to nominate and cast votes for the Presidential and Vice-Presidential candidates. The votes are sent to the President of the Senate and are counted in the Houses of the Congress sitting in a joint session.

The Constitution intended to confer a wide discretion on the presidential electors in the choice of a President; but in practice, an elector dare not cast his vote for any other than the official nominee of his party. "As a matter of practice, the presidential electors in each State are nominated by the political parties, one slate of presidential electors by each party organization. This is done at state party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be. Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican party or the Democratic party. Strictly speaking, therefore, the President and Vice President are *not* elected in November. Only the presidential electors are elected at that time. The official election of President and Vice-President takes place at the hands of these electors who meet in their respective states and vote as will be explained a little later." ("The Constitution of the United States" by W. B. Munro, 1944, p. 74). The author explains later that the electors meet in their respective States and cast their votes on the first Monday in the following January.

To be qualified for the office, the President must be a natural-born citizen of the U.S.A., not less than 35 years of age and resident in the country for at least fourteen years. His salary (which is $ 75,000) shall neither be diminished nor increased during his tenure of office. In case of a vacancy in the office of the President caused by death or any other disability during his term, his place is taken by the Vice-President; and in the event of a vacancy occurring in respect of both the President and the Vice-President, the office is to be filled *ad interim* by the various members of the Government according to a settled order fixed by statute. The President, the Vice-President and all civil officers of the U.S.A., are liable to be removed from office on impeachment for, and conviction of, treason, bribery, or other crimes and misdemeanours.

As to the genesis of the office, English writers lay much stress upon the British tradition. "It is tolerably clear," wrote Sir Henry Maine, "that the mental operation through which the framers of the American Constitution passed was this: they took the King of Great Britain, went through his powers and restrained them whenever they appeared to be excessive, or unsuited to the circumstances of the United States." ("Popular Government". p. 212.)

American writers have however taken pains to refute this, but the historical link with the past cannot be denied.

129
135

In the words of Prof. Laski " there is no foreign institution with which in any basic sense, it can be compared, because basically there is no comparable foreign institution. The President of the United States is both more or less than a King ; he is, also, both more or less than a Prime Minister (" American Presidency ", 1943, p. 22.)

For the functions, etc., of the American President see Chapter IX of the pamphlet on " Democratic Executives " in Constitutional Precedents (First Series.)

THE UNION OF SOVIET SOCIALIST REPUBLIC

Like Switzerland the U.S.S.R., also occupies a unique position. The Constitution does not provide for the office of a Chief Executive ; on the other hand, the person who is spoken of as the President of the U.S.S.R., is the Chairman of the Presidium of the Supreme Soviet of the U.S.S.R., which is a sort of a standing Committee of the Legislature. This rather curious state of affairs may be explained by the fact that in the Russian Constitution the demarcation between the Executive and the Legislature is not so clear-cut as in some of the other constitutions. It will be noticed that the Presidium of the Supreme Soviet exercises many of the executive powers which in British India are exercised by the Governor-General.

The Supreme Soviet of the U.S.S.R., elects, at a joint sitting of both Chambers, its Presidium, consisting of a Chairman, sixteen Vice-Chairmen, a Secretary and twenty-four members of the Presidium. The Presidium is responsible to the Supreme Soviet in all its activities.

The Presidium has important functions. It convenes twice a year the sessions of the Supreme Soviet ; interprets the existing laws and issues decrees ; dissolves the Supreme Soviet, in case of the failure of the two chambers to agree, and arranges for new elections ; holds referendums on its own initiative or on that of one of the constituent republics ; revokes the decisions and orders of the Councils of People's Commissars of the Union and of the constituent republics if they violate the law ; in the intervals between the sessions of the Supreme Soviet removes from office and appoints People's Commissars of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet ; bestows decorations and honorary titles ; exercises the right of pardon ; appoints and dismisses the high command of the armed forces ; in the intervals between the sessions of the Supreme Soviet has the power to declare a state of war and at all times to order mobilization, to ratify and to denounce international treaties, to appoint and recall ambassadors, to receive the credentials and letters of recall of foreign representatives.

GIPD—M—51 CA—19-11-46—600.

SNO 1666

136

CONSTITUTIONAL PRECEDENTS

(THIRD SERIES)

Pamphlet No. 2 : Fundamental Rights (II)

NL ARCHIVES

120
137

FUNDAMENTAL RIGHTS (II)

We may now proceed to analyse the fundamental rights embodied in the Constitutions of some of the more important countries of the world and to frame the draft of a Bill of Rights for incorporation in the Indian Constitution. For this purpose, it is useful to recognise a distinction between two broad classes of rights : there are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others merely require that the State shall abstain from prejudicial action. Typical of the former is the right to work, which cannot be guaranteed further than by requiring the State, in the language of the Irish Constitution, " to direct its policy towards securing that the citizens may, through their occupations, find the means of making reasonable provision for their domestic needs "; typical of the latter is the right which requires, in the language of the American Constitution, that "the State shall not deprive any citizen of his liberty without due process of law". It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head of "Fundamental Rights" in certain Constitutions, *e.g.*, in the Constitution of the USSR and in the Weimar Constitution of the German Reich, possibly because neither was intended to be enforced by legal action. But the distinction is clearly recognised (though not uniformly pursued) in the Irish Constitution, which deals first with "fundamental rights" strictly so called, and then with "directive principles of social policy", the latter being expressly excluded from the purview of the courts. A similar distinction is recognised in Dr. Lauterpacht's "International Bill of the Rights of Man" (1945). The substantive provisions of the Bill are in two parts, Part I dealing with rights meant to be enforced by the ordinary courts and Part II dealing with rights incapable of or unsuitable for such enforcement. We may usefully follow this plan and separate the two classes of rights : Part A may deal with fundamental principles of State policy and Part B with fundamental rights strictly so called. The following draft is suggested for Part A ; it is meant to be illustrative rather than exhaustive :—

"PART A,,.

"The principles set forth in this Part are intended for the general guidance of the appropriate legislatures and governments in India (hereinafter referred to collectively as 'the State'). The application of these principles in legislation and administration shall be the care of the State and shall not be cognisable by any court.

"1. The State shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.

"2. The State shall promote internal peace and security by the elimination of every cause of communal discord.

"3. The State shall, as far as possible, secure to each citizen—

(1) the right to work,

(2) the right to education,

(3) the right to maintenance in old age and during sickness or loss of capacity to work,

(4) the right to rest and leisure,

In particular, the State shall make provision for free and compulsory primary education.

"4. The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

"5. The State shall protect the culture, language and script of the various communities and linguistic areas in India.

"6. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

"7. The State shall ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that they shall not be forced by economic necessity to take up occupations unsuited to their sex, age or strength."

It is obvious that none of the above provisions is suitable for enforcement by the courts. They are really in the nature of moral precepts for the authorities of the State. Although it may be contended that the Constitution is not the proper place for moral precepts, nevertheless constitutional declarations of policy of this kind are now becoming increasingly frequent. (See the In troduction to the I.L.O., publication "Constitutional Provisions concerning Social and Economic Policy", Montreal, 1944.) They have at least an educative value. The first clause is taken from the Declaration of Havana made in 1939 by the representatives of the Governments, employers and workpeople of the American Continent. The second, fourth and fifth clauses are peculiary needed in India. The third clause embodies certain objectives of social and economic policy which are now widely recognized ; see, for example, Articles 118-121 of the Constitution of the USSR and Articles 42 and 45 of the Irish Constitution. The sixth clause relating to nutritional and other standards is taken from the recommendations of the United Nations Conference on Food and Agriculture, 1943, and is of special importance to India. The seventh clause is taken from Article 45 (4) 2° of the Irish Constitution, 1937.

We now come to the other Part, Part B, relating to fundamental rights strictly so called, that is to say, rights which are meant to be enforced by legal action. Here we enter upon controversial ground.

"There are very few countries which have fully adopted the system of judicial review enabling courts to act in that capacity in the matter of the fundamental rights of the individual guaranteed by the constitution. In the

United States, by long-established practice—though not in pursuance of any express provision of the Constitution—the Supreme Court has exercised that power since its decision in the historic case of *Marbury v. Madison*. This is also the position, by virtue of an express constitutional provision, in Brazil, Venezuela, and some other Latin-American countries, in Czechoslovakia, Rumania, and the Irish Free State. In a number of countries—such as Australia, Canada, and Germany (in the Constitution of 1919)—judicial review is limited largely to questions relating to the respective legislative competence of the Federation and of the Member States.

"On the other hand, in many States the constitution specifically excludes the interpretation of laws—and *a fortiori* any declaration of their invalidity—from the purview of the judiciary. Judicial review of legislation is contrary to the constitutional doctrine of France, and above all, of Great Britain, where the supremacy of Parliament is absolute. Although the Constitution of Soviet Russia of 1923 gave (in Article VII, sec. 43) the Supreme Court of the Union the power to render decisions, at the request of the Central Executive Committee of the Union, on the constitutionality of any regulations made by the Republics of the Union, no such powers have been conferred upon it by the Constitution of 1936. .....

"The doctrine of judicial review has been defended with fervent approval by great lawyers in the United States and elsewhere. Daniel Webster and Francis Lieber praised it as a bulwark of liberty. Lord Bryce was of the view that "there is no part of the American system which reflects more credit on its authors or has worked better in practice." Dicey was a strong believer in the doctrine of the supremacy of Parliament in England. But he was emphatic that it was "the glory of the founders of the United States"—in fact the doctrine of judicial review was adopted a quarter of a century after the foundation of the Republic—to have established a system of protection of the Constitution essential to a federal system (actually, the exercise of the power of judicial review by the Supreme Court has borne little relation to the fact of the federal structure of the United States). Tocqueville praised it as most favourable to liberty and to public order. After one hundred and forty years of operation it has the unqualified support of a large—perhaps predominant—section of American legal opinion as a bulwark of liberty of the people against the rashness and the tyranny of short-lived legislative majorities.

"On the other hand, the doctrine of judicial review has found from its very inception violent opponents and detractors in the country of its origin. Jefferson and Madison denounced it. Great teachers of constitutional law, such as J. B. Thayer, have drawn attention to the dangers of attempting to find in the Supreme Court—instead of in the lessons of experience—a safeguard against the mistakes of the representatives of the people. That criticism has grown in the last fifty years to the point of bitter denunciation as the result of the exercise of the power of judicial review in a manner which, in the view of many, has made the Supreme Court a defender of vested rights and social statics. Some French jurists, who were attempting to find a remedy for the absence of an effective guarantee of fundamental rights in their own constitution have come to regard the experience of judicial review in the United States as a sufficient deterrent against introducing judicial review in France. In countries other than the United States, in which judicial review of legislation is recognized, it has been exercised only in rare cases for the protection of the rights of the individual." [Pp. 186-190, ~~omitting footnotes~~. Lauterpacht An International Bill of the Rights of Man, 1945.]

(140)

In the peculair circumstances of India, there may well be a demand for a Bill of Rights enforceable in the courts. There is ample material available for the preparation of such a Bill, but its drafting will require great care and must be reserved for a future occasion.

NATIONAL ARCHIVES OF INDIA

SNO 1666 (141)

CA.42/47- Cons.
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 25th April, 1947.

From :-
K.V.Padmanabhan Esq., M.A.,LL.B.,
Assistant Secretary.

To :-
All the Members of the Constituent Assembly and the Committees of the Assembly.

Sir/Madam,

I am directed to forward herewith, for your use, a copy of a handbook showing the personnel of the Committees set up by the Constituent Assembly, with the Resolutions or Rules under which they were set up.

I have the honour to be,
Sir/Madam,
Your most obedient servant,

K.V.Padmanabhan

(K.V.PADMANABHAN.)
ASSISTANT SECRETARY.

H/25-4-47.
400 Copies.

NATIONAL ARCHIVES OF INDIA

SNO 1667 (1142) 135

CONSTITUENT ASSEMBLY

CIRCULAR No. CA/2/N.O./46

To

ALL MEMBERS OF THE CONSTITUENT ASSEMBLY

New Delhi, the 31st January, 1947

SUBJECT:—*Procedure regarding Divisions in the Constituent Assembly*

SIR,

I am directed to state for your information and guidance that the following procedure has been laid down by the President for taking divisions in the Constituent Assembly.

I. On the conclusion of a debate, the question before the House should be put from the Chair. Those in favour of the motion shall be invited to say 'Aye', and those against it 'No', and the Chairman shall say 'I think the Ayes (or the Noes) have it.' If this statement of the person presiding goes unchallenged, he shall then say twice 'The Ayes (or the Noes) have it'; and the question before the House shall be determined accordingly.

II. But if the minority desire a division, they shall challenge the opinion by exclaiming 'The Noes (or the Ayes) have it', whereupon the person presiding, if satisfied that the division is justifiably claimed, shall order a division to be held by uttering the word 'Division'. Upon this order, the Secretary shall cause electric bells to ring in the Notice Office, and in other appropriate rooms and passages in the Council House in order to summon absent members to the Constitution Hall. Immediately after the bells stop ringing, all the outer doors of the Members' Lobby shall be closed, and the Watch and Ward Staff posted at each door with instructions to prevent any entry or exit through these doors until the division is concluded. Then the person presiding shall read the terms of the motion before the House and put the question for a second time. If a division is still demanded he shall say 'Ayes to the Right. Noes to the Left.'

III. According as they wish to vote, Members shall then proceed to the 'Ayes' or 'Noes' lobby, and there pass in single file before the Telling Clerk. On reaching the desk of the Telling Clerk each Member in turn shall call out the division number which is allotted to him for this purpose and which he is requested to commit to memory at the commencement of each session. The Telling Clerk shall then mark off *this number* on the division list, simultaneously calling out name of the Member. In order to ensure that his vote has been properly recorded, the Member should *not* move off until he has clearly heard the Telling Clerk thus call out his name.

IV. (a) When the voting process as described above is completed in the division lobbies the Telling Clerks shall present their division lists to the Secretary who shall count the votes recorded thereon, and present the totals of 'Ayes' and 'Noes' to the person presiding, who shall announce the result to the House. The division is not at an end until the result is so announced. If the numbers of 'Ayes' and 'Noes' are equal the question shall be decided by the casting vote of the person presiding.

(b) A resolution in the Constituent Assembly varying the provisions of paragraph 15 of the Cabinet Mission statement or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. Votes shall be counted accordingly in the divisions on such resolutions.

13C (143)

V. (a) A member who is unable to go to the division lobby owing to illness may, with the permission of the Chair, have his vote recorded either at his seat in the Assembly Chamber or in the Members' Lobby.

(b) If a member finds that he has voted by mistake in the wrong lobby, he shall be allowed to correct his mistake, provided he brings it to the notice of the Chair before the result of the division is announced.

(c) When the Telling Clerks have brought the division lists to the Secretary's table a member who has not till that time recorded his vote but who then wishes to have his vote recorded may do so with the permission of the Chair.

VI. If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for 'Aye' and for 'No' respectively to rise in their places, and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman, there and then declares the determination of the House, the names of voters will not ordinarily be recorded.

I have the honour to be,

SIR,

Your obedient servant,

H. V. R. IENGAR,

Secretary, Constituent Assembly.

NATIONAL ARCHIVES OF INDIA

GIPD—L9C Assembly—27-1-47—550.

SNO·1668

CA/52/RR/47

(144)

137

CONSTITUENT ASSEMBLY OF INDIA.

Council House,
New Delhi, the 30th April, 1947.

To

(1) All members of the Constituent Assembly.

(2) Members of the Committees who are not members of the Constituent Assembly.

Subject:- PARLIAMENTARY DEBATES AND OTHER PAPERS.

Sir,

I am directed to send herewith for your use a copy each of the following:-

(i) Parliamentary Debates (Hansard), House of Commons - on Indian Policy (February - March 1947).

(ii) Parliamentary Debates (Hansard), House of Lords - on Indian Policy (February 1947)

(iii) Constitution of Republic of China and Constitution of Japan.

(iv) A Bird's-Eye View of the Principal Federations and Unions in the World (in Chart Form)

2. Items (iii) and (iv) form part of the Constitutional Precedents (Second Series) and may kindly be added to the copy already supplied to you.

I have the honour to be,
Sir,
Your most obedient servant,

K.V. Padmanabhan

(K.V. PADMANABHAN)
ASSISTANT SECRETARY.

AVT/300 copies.

NATIONAL ARCHIVES OF INDIA

SNO·1669

138
145

No. CA/68 /Ser./47.

CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 28th August, 1947.

To

All Members of the Constituent Assembly of India.

Subject:- Curfew Passes for Members of the Constituent Assembly.

Dear Sir/Madam,

Members residing in areas where curfew is in force or likely to be so in Delhi may kindly apply to the District Magistrate, Delhi, for passes for the Members and their personal assistants etc. so as to enable them move through such areas. The District Magistrate is being requested to ensure that such requests receive prompt attention, and also to permit the Members to use their membership cards in lieu of curfew passes until such time as the passes are issued.

Yours truly,

(B.F.H.B.Tyabji)
Joint Secretary.

NATIONAL ARCHIVES OF INDIA

SNO·1670

CA/52/RR/47
CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, 22nd August, 1947.

Subject: Distribution of Constituent Assembly Papers

Dear Sir/Madam,

I send herewith for your use a copy each of the following papers:-

1. The India (Provisional Constitution) Order, 1947.
2. Form of agreement between Indian States and the Dominion of India.
3. Form of Instrument of Accession.

Yours truly,

(K.V. PADMANABHAN)
UNDER SECRETARY.

TO

ALL MEMBERS OF THE CONSTITUENT ASSEMBLY.

NATIONAL ARCHIVES OF INDIA

(142) 139 140

INSTRUMENT OF ACCESSION OF.....

WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modification as the Governor-General may by order specify be applicable to the Dominion of India;

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

NOW THEREFORE

I.....
Ruler of .....
in the exercise of my sovereignty in and over my said State
Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of..... (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this

L4T
148

State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the vaildity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this.....day of August, Nineteen hundred and forty seven.

.....

I do hereby accept this Instrument of Accession.

Dated this.....day of August Nineteen hundred and forty seven.

.....

(Governor-General of India)

NATIONAL ARCHIVE OF INDIA

(149) 442

SCHEDULE

The matters with respect to which the Dominion Legislature may make laws for this State

---

A. Defence

1. The naval, military and air forces of the Dominion and any other armed force raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an Acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.

2. Naval, military and air force works, administration of cantonment areas.

3. Arms; fire-arms; ammunition.

4. Explosives.

B. External Affairs

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

2. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.

3. Naturalisation.

C. Communications.

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.

2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

4. Port quarantine.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

8. Carriage of passengers and goods by sea or by air.

143 (150)

9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.

D. Ancillary.

1. Elections to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.

2. Offences against laws with respect to any of the aforesaid matters.

3. Inquiries and statistics for the purposes of any of the aforesaid matters.

4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the Acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

NATIONAL ARCHIVES OF INDIA

(15) 444

AGREEMENT BETWEEN THE STATE OF.....
AND THE DOMINION OF INDIA

Whereas it is to the benefit and advantage of the Dominion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being, between the Dominion of India or any part thereof and the Indian States:

Now therefore it is agreed between the State and the Dominion of India that:-

1. (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof, and the State.

(2) In particular, and without derogation from the generality of sub-clause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this Agreement.

2. Any dispute arising out of this Agreement, or out of the agreements or arrangements hereby continued, shall, unless any provision is made therein for arbitration by an authority other than the Governor-General or Governor, be settled by arbitration according, as far as may be, to the procedure of the Indian Arbitration Act, 1899.

3. Nothing in this Agreement includes the exercise of any paramountcy functions.

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Secretary to the Government of India.

NATIONAL ARCHIVES OF INDIA

SCHEDULE.

1. Air Communications.
2. Arms and equipment.
3. Control of commodities.
4. Currency and coinage.
5. Customs.
6. Indian States Forces.
7. External Affairs.
8. Extradition.
9. Import and Export Control.
10. Irrigation and Electric Power.
11. Motor vehicles.
12. National Highways.
13. Opium.
14. Posts, Telegraphs and Telephones.
15. Railways (including police and other arrangements in Railway lands).
16. Salt.
17. Central Excises, relief from double income-tax and other arrangements relating to taxation.
18. Wireless.

NATIONAL ARCHIVES OF INDIA

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Page - 3
CONSTITUTIONAL PRECEDENTS
(THIRD SERIES)
PAMPHLET NO. 1: Fundamental Rights (I).
SNO.1643-
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Page - 4
FUNDAMENTAL RIGHTS (I)
66
One of the earliest tasks of the Constituent Assembly that is to frame the Constitution of the future Indian Union will be to set up an Advisory Committee on the rights of citizens, minorities, and tribal and excluded areas". A Committee with such multifarious functions will doubtless find it necessary

to split up into at least four sub-committees corresponding to the four branches of its work, and one of these sub-committees will have to deal with the subject of citizens' rights. This is a subject with a long history going back to Magna Carta and perhaps earlier, into the details of which it is unnecessary to enter here. It is sufficient for our present purpose to explain the nature of the problem and to indicate how it has been sought to be solved in other countries.

The Constitutions of a great many countries contain an imposing array of such rights, sometimes described as " fundamental rights". Reference is invited in this connection (1) to Amendments I-X, XIII-XV, and XIX to the Constitution of the U.S.A., (2) to Articles 4, 31, 44, 45, 49, 50, 55-58, 60 and 65 of the Swiss Constitution, (3) to Articles 109-160 of the German Constitution of 1919, (4) to Articles 118-128 of the Constitution of the U.S.S.R., (5) to Arricles 40-44 of the Constitution of Ireland (printed in the Second Series of Constitutional Precedents). England has no written Constitution, but the great Charters, Magna Carta, the Petition of Rights and the Bill of Rights form part of the Constitution. Broadly speaking, the rights declared in these Constitutions relate to equality before the law, freedom of speech, freedom of the press, freedom of religion, freedom of assembly, freedom of association, security of person and security of property. Within limits these are all well-recognised rights and it may be useful to draw attention to them by embodying them in the Constitutional Charter. The difficulty is in defining the precise limits in each case and in devising effective protection for the rights so limited. Some of the Constitutions have attempted to define the limits of some of these rights and in doing so have gone far towards destroying them. As an example, we may take Article 153 of the German Constitution of 1919, which runs-

Property is guaranteed by the Constitution. Its extent and the restrictions placed upon it are defined by law. to

Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich."

In other words, rights of private property are said to be inviolable except where the law otherwise provides, which means that the rights are not inviolable.

Similarly, Article 115 provides "The residence of every German is an inviolable sanctuary for him; exceptions are admissible only in virtue of laws". The fact of the matter is that while these rights can be enunciated in broad terms, it is

not possible to enumerate in advance every possible exception; the framers of the Constitution, therefore, leave the exceptions to be put in from time to time by the ordinary Legislature. The result is that there is no constitutional guarantee against an oppressive Legislature, ndo,vlovia doze thenedaiads

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The other difficulty, namely, that of devising effective protection for the rights defined, really arises out of the difficulty of definition already pointed out. Where a right can only be indicated in broad terms, there is an obvious risk in allowing it to be enforced in the ordinary courts, because there is no knowing how broadly they might interpret it. There are at least three alternatives possible in this connection:-

(1) to take this risk and allow the rights, however imperfectly defined, to be enforced in the ordinary courts;

(2) to set out the rights merely as moral precepts for the authorities concerned and to bar the jurisdiction of the ordinary courts either expressly or by implication;

(3) to allow the more easily definable rights to be enforced in the ordinary courts and keep the rest out of their purview.

The difficulties of the problem are best elucidated by a few concrete cases. Let us take one of the most frequently enumerated of these rights, that of equality before the law; and let us take a country where the rights are enforceable by the Courts: the United States of America. The Fourteenth Amendment to the Constitution of the U.S.A., which came into operation in 1868, puts it in the form that no State shall "deny to any person within its jurisdiction the equal protection of the laws". Obviously, these words are not to be taken too literally; otherewise, they would render invalid even a State law granting special protection to women or children, as distinguished from other

inhabitants, e.g., a law that exempted children under the age of seven from all criminal liability. And so it has been held by the Supreme Court that the mere fact that a law applies to a particular class of inhabitants and not to other classes is not sufficient to invalidate it. But even within the same main class, does the Fourteenth Amendment require absolute equality?

In Radice v. New York, a case decided in 1924 [264 U.S. 292], the Supreme Court was called upon to decide whether a New York law which prohibited the employment of certain classes of women in restaurants of certain classes of

cities
between 10 p.m. and 6 a.m. was valid or not. The law, it will be noticed, not only did not apply to male employees, but did not even apply equally to all classes of women employees; accordingly it was attacked as a breach of the Fourteenth Amendment. Nevertheless, the Court held that there was no breach. The Legislature can select special classes or sub-classes for special treatment, provided that the classification is not arbitrary, oppressive, or capricious and, of course, the Court is to decide whether it is so or not in any given case.

But the Court has not found this task easy. In 1902, in Connolly v. Union Sewer Pipe Company [184 U.S. 540], an anti-Trust statute of Illinois of 1893 came under scrutiny. The statute made trusts or combinations for certain specified purposes a criminal offence, but added that its provisions did not apply to agricultural products or livestock in the hands of the producer or raiser. It was argued against this statute that the exemption of agriculturists and stockmen was repugnant to the "equal protection" clause and therefore that the entire statute was invalid. The Supreme Court in accepting both these contentions observed :-

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"If combinations of capital, skill, or acts, in respect of the sale or purchase of goods, merchandise, or commodities, whereby such combinations may, for their benefit exclusively, control or establish prices, are hurtful to the publio interests and should be suppressed, it is impossible to perceive why like

ful.

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combinations in respect of agricultural products and live-stock are not also hurt-Two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicines, are, under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves or others in the sale of their goods or

merchandise; but their neighbours, who happen to be agriculturists and live-stock raisers, may make combinations of that character in reference to their grain or live-stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent

with the equal protection of the laws?

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"We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic trade or commerce shall be deemed criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to regard those regulations, but may combine their capital, skill, or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary. [184 U. S. 564.]

29

Nearly forty years later, in 1940, in Tigner v. Texas [310 U. S. 141], an anti-Trust law of Texas of a similar character and containing a similar exemption in favour of agricultural products and live-stock again came before the Supreme Court. This time, the Court upheld the law, observing, "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws', and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties, addressed, to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated

in law as though they were the same. And so we conclude that to write into law the differences between agriculture and other economic pursuits was within the power of the Texas legislature. Connolly's case has been worn away by the erosion of time and we are of opinion that it is no longer controlling". If the above qualification were incorporated in the Fourteenth Amendment, the "equal protection" clause would be diluted into the mild injunction that the State shall treat as equal in law only those persons within its jurisdiction who are equal in fact. It is, of course, for the Courts to judge whether persons are equal in fact; but, we may add, the same classes of persons that appeared to the Courts in 1902 to be manifestly equal in fact were found in 1940 to be, in truth, unequal. The protection offered by the clause has thus worn very thin. Indeed, even a Nazi State might have accepted it on its present interpretation, for its Courts could be trusted to rule "A Jew is not equal to an Aryan in fact and there is therefore no ground for treating him as equal

in law". Needless to say, the Supreme Court of the United States has a higher conception of the dignity of man, and the constitutional protection, though "worn away by the erosion of time" in certain other spheres, is still potent in the racial. In Missouri v. Gaines, a case decided in 1938 [305 U. S. 337], a negro named Lloyd Gaines, who had been refused admission to
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the School of Law of the State University of Missouri, sought to compel the University authorities to admit him upon the strength of the "equal protection" clause in the Constitution. The matter, after going through various Courts in the State, ultimately came before the Supreme Court of the United States; the following extracts from the judgment give the full facts of the case and show the view taken by the majority :-
"Petitioner is a citizen of Missouri. In August, 1935, he was graduated with the degree of Bachelor of Arts at the Lincoln University, an institution maintained by the State of Missouri for the higher education of negroes. That University has no law school. Upon the filing of his application for admission to the law school of the University of Missouri, the registrar advised him to communicate with the president of Lincoln University and the latter directed petitioner's attention to Section 9622 of the Revised Statutes of Missouri (1929), Mo. St. Ann. § 9622, p. 7328, providing as follows:-
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§9622. May arrange for attendance at university of any adjacent state-tuition fees. Pending the full development of the Linclon university, the board of curators shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri, and which are not taught at the Lincoln university and to pay the reasonable tuition fees for such attendance; provided that whenever the boa of curators deem it advisable they shall have the power to open any necessay school or department. (Laws 1921, p. 86, §7.)
"Petitioner was advised to apply to the State Superintendent of Schools for aid under that statute. It was admitted on the trial
It was admitted on the trial that petitioner's
work and credits at the Lincoln University would qualify him for admission

to the School of Law of the University of Missouri if he were found otherwise eligible.' He was refused admission upon the ground that it was 'contrary to the constitution, laws and public policy of the State to admit a negro as a student in the University of Missouri'. It appears that there are schools of law in connection with the state universities of four adjacent States, Kansas, Nebraska, Iowa an Illinois, where non-resident negroes are admitted.

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"In answering petitioner's contention that this discrimination constituted a denial of his constitutional right, the state court has fully recognized the obligation of the State to provide negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfil that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions. "But the fact remains that instruction in law for negroes is not now afforded by the State, either at Lincoln University or elsewhere within the State,

and that the State excludes negroes from the advantages of the law school it has established at the University of Missouri.

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"The state court stresses the advantages that are afforded by the law schools of the adjacent States, Kansas, Nebraska, Iowa, and Illinois, which admit non-resident negroes. The court considered that these were schools of high standing where one desiring to practise law in Missouri can get 'as sound, comprehensive, valuable legal education' as in the University of Missouri; that the system of education in the former is the same as that in the latter and is designed to give the students a basis for the practice of law in any State where the Anglo-American system of law obtains; that the law school of the University of Missouri does not specialize in Missouri law and that the course of study and the case books used in the five schools are substantially identical. Petitioner insists that for one intending to practise in Missouri there are special advantages in attending a law school there, both in relation to the opportunities for the particular study of Missouri law and for the observation of the local courts, and also in view of the prestige of the Missouri law school among the citizens of the State, his prospective clients. Proceeding with its examina-

tion of relative advantages, the state court found that the difference in distances to be traveled afforded no substantial ground of complaint and that there was an adequate appropriation to meet the full tuition fees which petitioner would have to pay.

"We think that these matters are beside the point. The basic consideration is not as to what sort of opportunities other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color. The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State. The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right. By the operation of the laws of Missouri a privilege has been created for white law students which is denied to negroes by reason of their race. The white resident is afforded legal education within the State; the negro resident having the same qualifications is refused it there and must go outside the State to obtain it. That is a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination.

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"Nor can we regard the fact that there is but a limited demand in Missouri for the legal education of negroes as excusing the discrimination in favor of whites. We had occasion to consider a cognate question in the case of McCabe v. Atchison, Topeka and Santa Fe Railway Co., supra. There the argument was advanced, in relation to the provision by a carrier of sleeping ears, dining and chair cars, that the limited demand by negroes justified the

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State in permitting the furnishing of such accommodations exclusively] for

white persons. We found that argument to be without merit. It made, we said, the constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of the constitutional right is that it is a personal one. Whether or not particular facilities shall be provided may doubtless be conditioned upon there being a reasonable demand therefor; but, if facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual who is entitled to the equal protection of the laws, and if he is denied by a common carrier, acting in the matter under the authority of a state law, a facility or convenience in the course of his journey which, under substantially the same circumstances, is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.' Id., 235 U. S pages 161, 162, 35 S. Ct. page 71.

"Here, petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other negroes sought the same opportunity.

"It is urged, however, that the provision for tuition outside the State is a temporary one,-that it is intended to operate merely pending the establishment of a law department for negroes at Lincoln University. While in that sense the discrimination may be termed temporary, it may nevertheless continue for an indefinite period by reason of the discretion given to the curators of Lincoln University and the alternative of arranging for tuition in other States, as permitted by the state law as construed by the state court, so long as the curators find it unnecessary and impracticable to provide facilities for the legal instruction of negroes within the State. In that view, we cannot regard the discrimination as excused by what is called its temporary character.

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"The judgment of the Supreme Court of Missouri is reversed and the cause is remanded for further proceedings not inconsistent with this opinion."

The importance of this judgment is enhanced by the fact that apart from the clause about equal protection of the laws in the Fourteenth Amendment, the U.S.A. Constitution does not expressly provide for equality of education-

al opportunities for all citizens, irrespective of race. The express provision contained in the Fifteenth Amendment is limited to the franchise: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In this respect, the Constitution of the U.S.S.R. is more liberal, because under Article 123, "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law. Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law." But the Supreme Court of the U.S.S R. has no power to disallow laws and acts which contravene the rights declared. The Presidium of the Supreme Soviet-which is a sort of joint Standing Committee of the Chambers of the Supreme Soviet (the Union Parliament)-interprets the laws of the U.S.S.R. and annuls decisions and orders of the

Governments of the Union and of the Constituent Republics in case they do not conform to law. [Article 49 of the Constitution of the U.S.S.R.]
The following a count, taken from the "New York Times", of a very fecent American case is of interest in this connection:-
"The U.S S pr me Court held on June 3rd (1916) by a six-to-one decision announced by Justice Stanley F. Reed that racial segregation of bus passengers, as authorized by law in 10 States (called 'Jim Crowism' after a negro character in an old negro folk song), was unconstitutional on buses crossing State borders. The Court dealt with the case of Irene Morgan, a negro girl, who, when travelling in a bus going from Virginia to Maryland, had been arrested and fined 10 dollars for refusing to change her seat and sit in the rear marked 'For Coloured Patrons' (as is general in trolley cars, buses, and trains in the South), thus violating the Virginia 'Jim Crowism' statute. The Virginia Supreme Court of Appeal upheld the conviction, and in the hearing before the Supreme Court the State of Virginia defended the segreration law as 'recognition of human nature' arguing that it prevented racial clashes that might endanger public safety. The Supreme Court decided, however, that, there being no Federal Act dealing with the separation of races in inter-State transportation, the Virginian

Statute interferes with the freedom of inter-State commerce which required 'uniformity' in the seating arrangements for the different races in inter-State travel, and for this reason was unconstitutional."

It has already been pointed out that the "equal protection" clause, as interpreted by the Supreme Court, does not prevent special legislation for special classes provided the classification is not arbitrary. It has also been pointed out that the task of deciding whether the clause, in a given case, is arbitrary or not is not easy. An illustration of this difficulty has already been given in the matter of anti-Trust laws; a few others in the sphere of taxation may now be mentioned. In 1935, in the case Stewart Dry Goods Co. v. Lewis (294 U.S. 550), the Supreme Court held invalid a Kentucky law imposing a graduated tax upon annual gross sales of retail merchants ranging from 1/20 per cent upon the first $400,000 of gross sales to 1 per cent on sales over $1,000,000. In the language of the Court, "The law arbitrarily classifies these vendors for the imposition of a varying rate of taxation, solely by reference to the volume of their transactions, disregarding the absence of any reasonable relation between the chosen criterion of classification and the privilege the enjoyment of which is said to be the subject taxed."

But in the previous year (1934), in Fox v. Standard Oil Co. of New Jersey [294 U.S. 87], the Court had, by a majority of 5 to 4, upheld a West Virginia graduated tax running from $2 for one store to $250 for each store in excess of 75, saying that a series of gasoline stations maintained in a single ownership has the benefit of chain organization and that therefore the graduation of the tax according to the number of stores owned was not arbitrary. Again, in 1940, in Madden v. Kentucky [309 U.S. 83] the Court, with two dissentient Judges, upheld a Kentucky statute imposing on its citizens an annual ad valorem tax on their deposits in banks outside the State at the rate of 50 cents per 100 dollars and on their deposits in banks within the State at the rate of 10 cents per 100 dollars. This had been attacked on the ground, among others, that it discriminated between those who deposited their money in Kentucky banks and those who deposited their money in banks outside Kentucky and thus offended against the "equal protection" clause. The

Court observed (1) that in taxation, even more than in other fields, the legislature possesses the greatest freedom in classification, (2) that the presumption

of validity attaching to legislation can be overcome only by the most explicit proof that the classification adopted by the legislature was "a hostile and oppressive discrimination against particular persons and classes", and (3) that in this case the treatment accorded to the two kinds of deposits may have resulted from the differences in the difficulties and expenses of tax collection.

We may now turn to another of the fundamental rights enunciated in the Constitution of the U.S.A. In the Fifth Amendment, which applies to the Centre, it is declared that no persons shall be deprived of life, liberty or property without due process of law; and in the Fourteenth Amendment, there is a similar declaration applying to the States: "Nor shall any State deprive any person of life, liberty or property without due process of law". A vast volume of case law has gathered round this "due process" clause, of which it has been said that it is "the most important single basis of judicial review today". At first it was regarded only as a limitation on procedure and not on the substance of legislation; but it has now been settled that it applies to matters of substantive law as well. In fact, the phrase "without due process of law" appears to have become synonymous with "without just cause", the Court being the judge of what is "just cause"; and since the object of most legislation is to promote the public welfare by restraining and regulating individual rights of liberty and property, the Court can be invited, under this clause, to review almost any law. The Court has upheld laws providing for compulsory vaccination (1905); for compulsory sterilization of mental defectives (1927); for commitment of persons with a "psychopathic personality" (1940); but not a law forbidding the use of shoddy in the manufacture of mattresses (1926), nor one requiring every pharmacy to be owned by a licensed pharmacist (1928). The usual issue in such cases is whether what is called the "police power" of the State-in other words, the inherent power of every State "to prescribe regulations to promote the health, peace, morals, education and good order of the people" justifies the particular law under consideration. Since there is no certain criterion in these matters, the Court's verdict may vary from time to time. Thus in Lochner v. New York [1905, 198 U.S. 45], a New York law forbidding more than 60 hours' work in any week or an average of more than 10 hours per day in bakeries or confectionaries was held unconstitutional as infringing the liberty of the individual without due process of law. The judgment of the majority of the Court (5 to 4) observed :-

"The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is

no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion

9
of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground." But twelve years later, in Bunting v. Oregon [243 U. S. 426], the Court, without mentioning the Lochner case, upheld a ten-hour law for factories. Again, in 1923, in Adkins v. Children's Hospital [261 U. S. 525], the Court by a narrow majority overthrew an Act of Congress prescribing a minimum wage for women and children in the district of Columbia. But in 1937, in West Coast Hotel Co. v. Parrish, the Court, by a bare majority (5 to 4), overruled the Adkins case and upheld a Washington Act authorizing the fixing of minimum wages for women and minors. There has been similar oscillation in regard to laws providing for price-control and Dodd's comment on this line of cases is: "The question is one as to the efficient action of the government, while at the same time protecting the essential rights of the individual. The cases printed below will indicate that the court has wavered from one position to another, and may now be wavering back to its earlier position.'" [Dodd's "Cases and Materials on Constitutional Law ", Third Edition, p. 649].
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We are now in a position to realise some of the difficulties of the problem of fundamental rights. To enunciate them in general terms and to leave it to the Courts to enforce them will have the following consequences:-
(1). The Legislatures not being in a position to know what view the Courts will take of a particular enactment, the process of legislation will

become difficult.
(2) There will be a vast mass of litigation about the validity of laws and the same law that was held valid at one time may be held invalid at another or vice versa: the law will therefore become uncertain.
(3) The Courts, manned by an irremovable judiciary not SO sensitive to public needs in the social or economic sphere as the representatives of a periodically-elected legislative body, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant.
As against these discomforating for incubtedly be the advantage that racial and religious minorities will feel some security. Many European Constitutions contain a declaration of fundamental rights, but there is often no Court with power to pronounce an offending law unconstitutional.
Even in Switzerland, where the Federal Court is competent to entertain complaints of violation of the constitutional rights of citizens, the Constitution requires the Court to apply the laws passed by the Federal Assembly. [See Article 113 of the Swiss Constitution.]
The difference between the Supreme Court of the United States and the Swiss Federal Court in this respect is explained thus by Adams and Cunningham:-
"Every Judge of the Supreme Court of the United States is bound to treat as void all legislative Acts, whether proceeding from Congress or from the State legislatures, which are inconsistent with the Federal Constitution, or are in excess of the legislative powers which that Constitution confers. The Supreme Court only inquires into the validity of Acts of Congress for the purpose of determining a question brought before it in a legal proceeding. The Federal Tribunal, on the contrary, cannot inquire into the constitutional character of a law or a resolution of a general nature which has been
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adopted by the Federal Assembly, any more than of a treaty ratified by that body. It is bound by the Constitution to accept those laws and resolutions, and to apply them to the cases submitted to its judgment.
The reason is clear. The measures which, after being framed by the Federal Council and adopted by the Federal Assembly, are accepted by the people, either tacitly or through the Referendum, thus obtain the sanction of the Swiss people. Hence the Federal Tribunal must bow to the decision

of the people, and regard all such measures as constitutional and inviolable." ["The Swiss Confederation" by Adams and Cunningham, 1889, pp. 267, 268.]

The Swiss Federal Court can, however, examine the constitutionality of cantonal laws.

The Irish Constitution of 1937 has followed the plan of separating "fundamental rights" from "directive principles of social policy "; the former are, to some extent, enforceable by the Courts, but the latter not at all. The former are set out in Articles 40-44 of the Constitution and the latter in Article 45, which begins thus: "The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas (the Irish Parliament). The application of those principles in the making of laws shall be the care of J the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution." There is no similar provision in Articles 40-44 expressly excluding the jurisdiction of the Courts. Some of the fundamental rights appear to be couched in terms which could be enforced by the Courts: e.g., section 40(6)2° provides that laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious, or class discrimination; section 44(2)4° prescribes that legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations; and so forth. Laws contravening these guarantees will doubtless be pronounced ultra vires.

But a provision such as "No citizen shall be deprived of his personal liberty save in accordance with law" occurring in section 40(4)1° cannot invalidate any law and is really meaningless as a guarantee against oppressive laws after enactment. Possibly it has a moral value and may afford ground for a referendum before the Bill becomes law, for under Article 27, Bills may be referred to the people, if they involve proposals of national importance. There is also a provision in Article 26(1)1° enabling the President, after consulting the Council of State (which is a sort of Privy Council), to refer any Bill to which the Article applies to the Supreme Court for a decision whether the Bill or any specified provision thereof is unconstitutional.

In the Austrian Constitution of 1920, certain fundamental rights were declared [e.g., Article 7 declared "All citizens of the Federation shall be equal before the law. Privileges of birth, sex, position, class and religion are abolished"] and there was also provision for a Constitutional Court, in

addition to an Administrative Court and the ordinary Courts of law. The ordinary Courts were not to inquire into the validity of any duly promulgated law [Article 89(1)], but the Constitutional Court was competent in certain circumstances to decide all such questions and to annul any laws, which it adjudged unconstitutional (Article 140); in addition, the Constitutional Court was expressly given power to entertain complaints of violation, by any administrative authority, of rights guaranteed under the

Constitution after the matter had been taken through all the stages of administrative appeal. [Article 144.] The net result of these provisions appears to have been that the Constitutional Court could annul a law as unconstitutional at the instance of the Federal Government or a Provincial Government [as the case might be] and to annul any administrative decision as unconstitutional at the instance of any aggrieved individual. The Constitutional Court consisted of a President, a Vice-President, and a number of other members; the President, the Vice-President, and one half of the other members were elected by the lower House and the other half of the other members by the Upper House of the Federal Legislature. They were to hold office for life. Further provisions as to the organization and procedure of the Constitutional Court were to be prescribed by Federal legislation,
In the next Part of this pamphlet an attempt will be made to analyse
and to
the fundamental rights embodied in a few typical Constitutions
suggest which of them may be included in the new Indian Constitution
and what form they should take,
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SNO. 1644
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ALL INDIA
CONGRESS
COMMITTEE.

(constituent Assembly Section).
Phone 40358.
6, Jantar Mantar Road,
New Delhi, 3.3.1947.
Dear Friend,
I am enclosing herewith a list of
Fundamental Rights & Duties which was prepared for
the consideration of the Experts Committee. The
Experts Committee however could not meet to consider
it. I am sending it to you, as it is, in the hope
that you will find it of some interest.
Yours sincerely,
KRKripalani
Secretary.

FUNDAMENTAL RIGHTS AND DUTIES.
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6.
All citizens irrespective of birth, rank, religion or
six are equal before the law and are entitled to full
protection of personal liberty.
No citizen shall be arrested, except in the act of
commiting a crime without warrant issued by a magistrate
which ought to be shown at the time of arrest or at the
latest within twenty-four hours after. Opportunity shall
be given without delay to make legal complaint against
such arrest,
Upon complaint made by or on behalf of any person
who is being unlawfully detained, the High Court and
any and every judge thereof shall forthwith inquire.
into the same and may make an order requiring the person
in whose custody such person shall be detained to
praduce the body of the person so detained before such
court or judge without delay and to certify in writing

as to the cause of the detention and such court or
judge shall thereupon order the release of such person
unless satisfied that he is being detained in
accordance with the law; provided however that nothing
in this article shall be invoked to prohibit, control
or interfere with any act of the military forces of the
Union during the existence of a state of war or armed
rebellion.
No pu ishment shall be inflicted for any action.
unless the action was designated as punishable before
it was committed.
No citizen shall be handed over to a foreign
power for prosecution or punishment.
The dwelling of a citizen is inviolable and
shall not be forcibly entered except in accordance
with law,
Every citizen has the right to express his ideas
and opinions freely This right may be limited only
by law and solely in the interest of public safety
or morality.
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All citizens are free to assemble peaceably
and unarmed and have the right to form associations.
These rights may be limited only by law and solely
in the interest of public safety and morality.

Every citizen has the right to keep and bear
arms in accordance with regulations and reservations.
made by or under Union Law.
All citizens without distinction are equally
eligible for public offices subject to the possession
of qualifications prescribed by law or duly constituted
authority. The Union and State Governments may make
provision for equitable representation of all
sections of the population in public services
provided there is no unfair discrimination against
or undue patronage in favour of any section.
Every citizen is free to choose and change
his domicile or place of residence within the
territories of the Union. This right may be restricted
only by Union Law.
Nationality in the Union is acquired and
terminated in accordance with Union law. Every
Indian resident in any State of the Union has the
same rights and duties as the subject of that State.
No citizen shall be compelled to render personal
service without due compensation and without his
full consent except labour imposed as a penalty by
judicial decree or by law for a public purpose.
Neither the Union nor any State of the Union
shall establish, endow or patronise any religion or
prohibit the free exercise thereof.
Every citizen shall have freedom of conscience
and the right freely to profess and practise his
religion subject to public order and morality.
Every religious organisation shall be free to
manage its own affairs, be the owner of or acquire

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21.
movable or immovable property, administer or dispose of the same, possess or enjoy its revenues and endowments, and maintain institutions for religious, educational or charitable purposes. These rights shall be subject to such restrictions as may be prescribed by law in the interest of public order and morality.
The right to propagate religious doctrines and practices not inconsistent with public order and morality and to express views against any such doctrines or practices is guaranteed provided that it is done in a manner not calculated to offend the reasonable susceptibility of persons belonging to any religion. or sect.
Every person shall be free to change his religious persuasion provided that (a) no one who has not completed the age of 18 shall change his religion. without the permission of his parent or guardian, (b) no religious conversion shall be recognised which is brought about by coercion, undue influence or the offering of material inducements, and (c) mass conversions may be regulated by law in the interest of public order and morality.
Liberty of the Press is guaranteed subject to such restrictions as may be imposed by law in the interest of public order or morality or to meet a grave emergency. The Press shall not be subject to censorship and shall not be subsidized. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.
The privacy of correspondence is inviolable and may be infringed only in cases provided by law for the purpose of dealing with a grave emergency.
Every citizen has a right to compensation for damage caused by the officials of the Union or a State, whether civil or military, through officiäl action not conforming to law or outside the scope

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of their duties. The Union or the State is responsible for the damage caused conjointly with the respective offending officials.
It shall be the duty of every State of the Union to provide free and compulsory education for all its citizens up to the age of 14 within a period of not more than 10 years from the commencement of this constitution.
It shall be the duty of every State of the Union to ensure for all its citizens within a period of not more than 15 years from the commencement of this constitution useful employment on fair wages, and protection and assistance in case of old-age, unemployment, sickness or accident.
Workers have the right to form unions to protect their interests.
No citizen of the Union shall be subject to any special disability or disqualification on the ground of sex. This shall not, however, prevent the imposition of restrictions on the employment of women in occupations calculated to affect their health or functions of motherhood.
No title other than a title indicating an office or an academic distinction shall be conferred on any citizen by the Union or any State. No citizen shall accept any title or decoration from a foreign State. All such titles and decorations existing at the commencement of the Union are hereby cancelled.
Mem Members of a community within a State of the

Union not speaking the language of the State shall not be restricted by way of legislation or administration in the free development of their language and culture.
In towns and districts of any State where a considerable proportion of citizens speak a language other than the language of the State, facilities shall

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be provided within the limits laid down by law to enable the children of such citizens to receive instructions. in their own mothertongue. Where any sums of public money are set aside for educational purposes in the State or municipal budgets or otherwise, a due share in the allocation of such sums shall be accorded to such linguistic minorities.
Every citizen has the right to choose his business, profession or calling subject to conditions laid down by law for the conduct of such business, profession or calling. Children below the age of 14 shall not be employed in mines and factories.
The law shall decide what kinds of property and within what limits may be in the exclusive ownership of the State upon grounds of public utility and also what limitations may be imposed on the rights of citizens and of corporations recognized by law to exploit the land, waters, minerals and other natural resources.
Every State shall have the right to regulate, alter or abolish land tenures so as to ensure the productive use of the land and reasonable livelohood for the tiller of the soil.

Subject to the above two clauses, the right to property is guaranteed to all citizens, corporations and autonomous bodies and no such right shall be taken away without compensation prescribed by law.

It is the duty of every citizen to safeguard and protect public property and to prevent its misuse or misappropriation, not to evade the taxes lawfully imposed and to help in the prevention of such evasion.

It is the duty of every citizen of the Union to defend the Union and every part thereof and perform military or police duty when called upon to do so by law or constituted authority.

All laws, customs and usages existing at the commence-ment of this constitution which recognizes untouchability or

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inferiority by birth of any citizen shall be deemed to have been repealed or abolished to the extent of such recognition.

No public authority including a civil or a criminal court shall in carrying out the functions and duties e trusted to it by any law recognize any law, custon or usage imposing a liability or disability on any person on the ground that he belongs to an inferior or impure caste or menial class.

Notwithstanding any custom or usage or prescription, all Hindus without any distinction of caste or denomination shall have right of access to and worship in all public Hindu temples, choultries, dharamsalas, bathing ghats, and other religious place. Rules of personal purity and conduct prescribed for admission to and worship in these religious places shall in no way discriminate against or impose any disability on any person on the ground that he belongs to an impure or inferior

caste or menial class.
It shall be the duty of every State of Union to make a periodic list of all the classes in the State who are specially backward in education or social development, and provide special educational and cultural facilities for their speedy advancement. In the annual budget a reasonable amount will be set apart for this purpose and administered by a special authority whose appointment, powers and functions are defined by law. The provision of these facilities shall be in addition to those provided for the community in general to which these. classes should have free and equal access.
In the settlement, disposal, or aliance of land belonging to any State, the claims of backward classes shall be given preference as far as possible.
The aboriginal tribes living in the tribal areas of any State shall be entitled to special protection of their tribal system, their land, their customary life, health and education.
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Page - 22
From
To
SNO. 1645
No. CA./18/Cons/47.
CONSTITUENT ASSEMBLY OF INDIA.
Sir B.N.Rau,
Constitutional Adviser,
Constituent Assembly of India.
All Members of the Central and Provincial Legislatures.
New Delhi, the 17th March, 1947.
20
Sir,
In order to facilitate the work of framing a new Constitution before June, 1948, it is considered desirable to issue a questionnaire, bearing on the salient features of the Constitution, to all the members of the various Provincial Legislatures and of the Central Legislature and to invite their individual views thereon.
2.

Such a questionnaire is annexed to this letter. The questionnaire is divided into five parts, and in each part are set out a certain number of questions bearing on its subject-matter. Brief explanatory notes have been inserted under each question.

3.

The questionnaire, as will be noticed, deals only with the Constitution of the Centre. But most of the questions will apply, mutatis mutandis, to the provincial sphere also. You are therefore requested to give your answers both in regard to the Union Constitution and in regard to the Provincial Constitutions.

4.

Your answers may kindly be sent so as to reach this office as early as possible and in any case before April 10, 1947, as the matter is very urgent.

5.

It is considered unnecessary to frame any questionnaire regarding Group Constitutions until the Sections have decided to set up such Constitutions.

I have the honour to be,

Sir,

Your most obedient servant,

BuRau

Constitutional Adviser.

CONSTITUENT ASSEMBLY OF INDIA.

21

QUESTIONNAIRE.

A.

Head of the Indian Union.

1. What should be the designation of the Head of the Indian Union?

Note: In this and the following notes reference has been made to the constitutions of various countries. But it must be remembered that the United Kingdom and Ireland are not Federations and even South Africa is not a true Federation.

U.S.A.

Switzerland

Ireland

Canada
Australia
South Africa.
President.
The local Executive Head is the Governor General
on behalf of His Majesty.
The local Executive Head is the Governor General.]
2. How should he be chosen?
Note: The answer will probably turn on whether the Head of the Indian Union is to be a real Head as in the U.S.A. or merely a nominal Head as in Switzerland. If he is to be a real Head, independent of the Legislature, he may have to be, elected otherwise than by the Legislature as in the U.S.A. If he is to be a nominal Head, not independent of the Legislature, he may be elected by the Legislature as in Switzerland.
The case of Ireland is peculiar, because the President is elected by the direct vote of the people and yet is to a large extent a nominal Head acting on the advice of Ministers responsible to the Legislature.
U.S.A.
The President is elected by an electoral college in which each State has as many electors as it has members in the Congress (i.e. the Federal Legislature, including both Houses), the

electors being elected in each State by adult franchise. This mode of election is presumably due to the theory of the American Constitution that the executive power must be completely separated from the legislative power. An absolute majority is required for election of the President. Where no candidate secures an absolute majority, the House of Representatives elects the President from among the highest three, each State having one vote.
Switzerland.
The President is elected annually by the Federal Assembly (i.e., the Federal Legislature, including both Houses) from amongst the members of the Federal Council (Executive), who are also elected by the Federal Legislature.

Ireland.
The President is elected by the direct vote of the
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people (secret voting, on the system of proportional
representation by means of single transferable vote.
3. What should be his term of office?
[Note:
U.S.A.
4 years (elected every leap year).
Switzerland. 1 year (annual election).
Ireland.
Canada
Australia
South Africa
7 years.
Customary term of 5 years.]
4. Should he be eligible for re-election?
Note:
U.S.A.
Eligible for re-election: previous to Franklin Roosevelt,
convention of not more than two terms.
Franklin
Roosevelt held office for 4 consecutive terms, the last one interrupted
by death.

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Switzerland Bo action of the President who is in office is
prohibited by the Constitution. By usage, the office
rotates among the members of Federal Council.
Ireland.
Eligible for re-election to the office once, but
only once.
5. Should the office rotate among the different communities in turn?
If so, how?
Note:
U.S.A.
Switzerland.

No provision.
By usage, the offices of the President and the Vice-
President rotate amongst the members of the Federal
Council in which the main communities are represented.
Ireland:
No statutory provision; but the first President was a
Protestant (Dr. Hyde, elected in 1938); the present
President is a Roman Catholic.]
6. Assuming that the Indian Union is to have a President as its Head, should there be a Vice-President or Vice-Presidents?
Note:
U.S.A.
There is a Vice-President who also presides over the
Senate. Method of election is the same as that of the
President except that when he fails to secure an absolute majority of the votes of the electors, he is elected by the Senate from among the highest two.
Switzerland.
There is one Vice-President elected by the Federal
Assembly from amongst the members of the Federal
Council.
Ireland.
No provision for Vice-President.

U.S.S.R.
The Presidium has a President and 16 Vice-Presidents,
corresponding to the number of Republics.]
7. What should be the term of office of a Vice-President?
Note:
U.S.A.
Switzerland.
Ireland.
4 years (election every leap year).
1 year.
No Vice-President.]

8. What should be the functions of the President?
Note:
U.S.A.
The President is the Commander-in-Chief of the Army,
Navy and Air Force, receives Ambassadors, etc., and
makes treaties subject to the consent of a two-thirds majority of
the Senate. He appoints Ambassaders and Consuls, Judges of the
Supreme Court and such inferior officers as provided for by law. He
recommends measures for the consideration of the Congress.
an absolute veto over legislation which can only be overcome
He has
by a
measure being passed by a two-thirds majority of each of the two
Houses. He has also, what is called, the "pocket veto", i.e., a measure
passed within ten days of the adjournment of the Congress and not
assented to by the President is deemed to have lapsed. He may grant
reprieves and pardons (except in cases of impeachment) for offences
against the State, commute sentences, etc. He is liable to impeachment.
The. President has only formal or ceremonial functions,
Switzerland.
the principal one being that of presiding over the
Federal Council. He is in charge of one of the administrative departments.
Ireland.
The President, on the nomination of Dail Eireann, appoints
the Prime Minister (Taoiseach) or the head of the

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Government, who, in turn, recommends the appointment of other members
of the Cabinet. He summons and dissolves Dail Eireann on the advice
of the Prime Minister and in case the Prime Minister has lost the
support of the majority in the Dail, the President may, in his absolute
discretion, refuse to dissolve the Dail. The President may at any
time after consultation with the Council of State convene a meeting
communicate inti them
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of either or both of the Houses by message or address which has

received the approval of Government - - on any matter of national or public importance or address a message approved by the Government to the nation at any time on any such matter. He is the Supreme Commander of all defence forces and all Commissions are held from him. He has a right of pardon and a power to commute or remit punishment. He is liable to impeachment.]

9. What should be the functions of the Vice-President?

Note:

U.S.A.

Switzerland.

Presides over the Senate; becomes President if President dies during term of office.

Member of the Federal Council, in charge of an administrative department, and presides over the Council in the absence of the President.]

10. Should the President be liable to removal? If so, in what manner?

Note:

U.S.A.

The President is removable from office only by impeachment. The Lower Chamber initiates proceedings and the Senate sits as a court of trial. The President is removed on the majority vote of the Senate sitting as the court of impeachment.

Switzerland.

Ireland.

'No specific provision.

Removable by impeachment. The President may be impeached

f stated misbehaviour. A proposal to either House prefer a charge
o
against the President is entertained when moved in writing by at least 30 members of that House and is adopted when, at least, two-thirds of the total members support it. The other House investigates the charges or causes the charges to be investigated.

If it sustains the charge

by a two-thirds majority of the total members, the President is removed.7

11. How is a temporary vacancy in the office of the President to be filled?

Note:
U.S.A.
Switzerland.
Ireland.
The Vice-President acts as President for the rest of
the term.
Apparently the Vice-President acts as President.
A Commission consisting of the Chief Justice, the Chairman
of Dail and the Chairman of Senate acts for the President.
The Commission may act by any two of their number]
B.
Executive.
12.
What should be the nature and type of the Union Executive?
Should it be of the British type (Parliamentary) or the American
type (Non-parliamentary) or the Swiss type (mixed) or any other
type?
Note:
From the point of view of practical administration
this is perhaps the most important question in the framing of the
new Constitution.
There are, as indicated in the questionnaire, three
main types of Executives.
In the British type, the Executive is
responsible to the Legislature and has to resign on loss of confidence
of the Legislature. In the American type, the Executive is not

responsible to the Legislature, each derives its authority from the
people direct and is not responsible to the other. In the Swiss type,
the Executive is elected by the Legislature for a term of 4 years (which
is also the life of the Legislature) and no question of resignation
during the term arises. In the Irish Free State Constitution of 1922,
we find a fourth type: there was a Ministry of the British type plus
certain additional Ministers appointed rather on the Swiss plan
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is to say, they were nominated by the Dail on the recommendation of a special committee, they held office for the term of the Dail, and were responsible only to the Dail. The British type is the one with which we are most familiar in India and its features are well-known.
main features of the Swiss type are (1) it gives all sections a chance of being represented in the Executive, the election being by proportional representation (2) it enables the Ministry to concentrate on the real problems of the country for a fixed term of 4 years without being.
distracted by motions of no-confidence (3) it ensures a substantial degree of responsibility to the Legislature, inasmuch as the Executive is not only elected by the Legislature but is also subject to its directions. The Irish Free State type had a short life and has been abandoned in the new Irish Constitution, which has adopted the British type.
U.K. and the By convention the Executive (Cabinet) is responsible to Dominions.
the Legislature and retains office so long as it enjoys
the confidence of the Legislature.
U.S.A.
The President is the head of the Federal Executive with a Cabinet of 10 heads of departments called Secretaries, appointed by him, subject to the nominal approval of the Senate and

answerable only to him. Executive not responsible to the Legislature.
Non-parliamentary.
Switzerland. The Federal Council consists of 7 members elected by the Legislature (by proportional representation) once in 4 years. They are eligible for re-election. Not more than one is elected from the same canton. A mixture of Parliamentary and Non-Parliamentary.
Ireland.
Ireland has put into statutory form what in U.K. is based
The government consists of 7 to 15 members
on convention.
appointed by the President. One of them acts as Prime Minister, and another

as Deputy Prime Minister. Responsible to Dail Eireann, though the Ministers may be chosen from both the Houses, at most two from the Senate. Parliamentary.]

13.

If Parliamentary, should there be any special provision to secure a stable Executive?

Note: The following observations in the Simon-Attlee Report are worth notice. Although they relate to the provincial sphere they are of general application:

"We think that under the conditions which have developed in the Indian provinces, Ministers are too much at the mercy of hostile combinations against them for good work to be done.

Ministers need to feel

that they are assured of a reasonable period within which their policy may mature and its results may be judged; at present some of them are so much occupied in maintaining their position by securing the temporary support of this or that group of critics or malcontents that it must be very difficult to carry on the main work of ministerial government at all."

In the Irish Constitution of 1922 an attempt was made to

Ireland.

secure stable administration by providing for Ministers, outside the

who retained office even after the Cabinet

Cabinet had resigned. This experiment was carried out in the first two Dails, but apparently was found unworkable. See note under question No.12 above.

China.

In case there is disagreement on any matter between the Legislature on the one hand and the Cabinet supported by

the President on the other, the Legislature can make its views prevail over those of the Executive only by passing a measure or proposition by a two-thirds majority of members present.]

14. What should be the composition of the Executive? What should be the maximum, if any, of the number of Ministers?

Note:

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U.K.
Canada.
Australia.
No statutory maximum. The number at present in the
Cabinet is 20 members including the Prime Minister.
No statutory maximum; the number at present is 20
members including the Prime Minister.
There is a statutory maximum of seven until Parliament
otherwise provides. The number at present is 19 members
including the Prime Minister. Ministers cannot remain in office more
than 3 months without being members of one of the Houses of the Legislature
South Africa. There is a statutory maximum of eleven. Ministers cannot
remain in office more than 3 months without being members
of one of the Houses of the Legislature.
U.S.A.
President with 10 heads of Departments called Secretaries
who are answerable only to him. None of these can be a
member of either House of the Legislature.
Switzerland.
The Federal Council consists of 7 members elected by the

two Houses of the Legislature at a joint sitting. None of them can be
a member of either House, but all may sit and speak without voting.
Consists of 7 - 15 Ministers, selected from among the
Ireland.
members of both the Houses, not more than two being
selected from the Upper House. All continue to be members of the
House from which they were selected]
15. Should provision be made to secure representation of different
communities on the Executive? If so, how?
Note:
U.S.A.
Switzerland.
No provision..

Not more than one member of the Federal Council can be
chosen from the same Canton.
Canada.
No statutory provision. In considering the claims of
various candidates for Ministerial office the Premier
has to take into account race, religion and geographical factors.
Where the total number was 23, 3 were usually assigned to French
Canada and 3 to Ontario; at least 1 was assigned to each of the
Provinces of Nova Scotia, New Brunswick, Manitoba, Saskatchewan,
Alberta and British Columbia, and a politician of Irish extraction
usually represented the English speaking Roman Catholic church.]
16. How should joint responsibility or co-ordination be secured?
[Note:
U.K. and the
Dominions.
By convention all the Ministers jointly responsible to
the Legislature. They are chosen by the Prime Minister. The Government
must be one which can. work together and can secure the support. of
the lower House. The first mark of the Cabinet is united and indivisible
responsibility.

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"U.S.A.
No responsibility to the Legislature Co-ordination
secured, because all the Secretaries hold office during
the pleasure of the President and are answerable to him.
Switzerland.
Federal Council is bound by the decisions of the Federal
Legislature. The Council arrives at a decision by
majority vote. When Council is not unanimous on any matter, it is
open to Ministers to speak against each other in the Legislature and
this sometimes happens%; but when once the Legislature decides the
matter, all Ministers loyally carry out the decision. The Legislature
may therefore be regarded as the co-ordinating factor in the last resort.
The Cabinet is collectively responsible to the Dail

Ireland.
Eireann and holds office during its command of majority
in the Dail. The statutory provisions follow the British convention.]
17. How should the members of the Executive be chosen?
Note:
U.K. and the The choice of the Prime Minister is made by the King, or
Dominions.
the Governor-General, as the case may be, and the nature
of the choice depends upon the state of parties in the lower House. The
Prime Minister chooses his colleagues in the Cabinet.
U.S.A.
Senate.
President (elected by an electoral college) selects
his Secretaries subject to the normal approval of the
Switzerland. The members of the Federal Council chosen by the Federal
Legislature at a joint sitting.
Ireland.
The President appoints the Prime Minister on the
recommendation of Dail and other Ministers on the
recommendation of Prime Minister]

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-12-
18.
Note:
What provisions should be made for the removal of the Executive?
U.K. and the The Cabinet holds office so long as it has the
Dominions.
confidence of the lower House. It can be removed by a
vote of no-confidence by the lower House.
U.S.A.
President may be removed by impeachment; Secretaries
are removable by the President.
Switzerland.
No specific provision.
Ireland.

The Prime Minister and Ministers hold office so long as
they have the support of the majority in the lower House.
Individual Ministers can be removed from office on the advice of the
Prime Minister.]
19. What should be the nature of relations between the Head of the Union and the Executive?
Note:
U.K.
The King is merely a formal Head. In all political
matters he acts on the advice of the Cabinet. He has
certain prerogative powers, namely, (1) the right to dissolve Parliament
(2) the right to refuse a dissolution of Parliament and (3) the right
to select Prime Minister. These rights are circumscribed by many
considerations and are very often of theoretical interest only. There
are also certain personal prerogatives which he exercises on his own
responsibility.
Dominions.
The Cabinet is the de facto Executive. In all political
matters the Governor-General acts only on the advice of the Cabinet. He
does not preside over the business meetings of the Cabinet, which are
summoned in the name of the Prime Minister. The Governor-General acts

merely as the constitutional head of the Government advised by the
Ministers.
. U.S.A.
The President is the Head of the Union, as well as the
Chief Executive.
Switzerland. The President is the Head of the Union and also a
Minister in charge of an administrative department like
other Ministers. No special powers, except those of a formal or
ceremonial character, vested in him..
Ireland.
The President is the titular Head and all laws are
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promulgated in his name. The President acts with the
The
consent of the Prime Minister and his cabinet except when the Cabinet loses

the confidence of the Dail. In that case the President may in his discretion, dissolve the Dail and call for fresh elections,
President is also advised by the Council of State which has the Prime Minister and Deputy Prime Minister among its members]
C.
Legislature.
20. Should the Union Legislature have a Single Chamber or two Chambers?
Note: Second Chambers are set up for various reasons: e.g., to represent special interests or classes as in Ireland; as a check on hasty and
ill-conceived legislation of the lower House as in
France; to provide equal representation to the different Constituent Units of a federation as in US A. It may provide for a continuous term of office, only a portion of the mombers retiring at regular interval as in U.S.A., and the old French Constitution,
This secures
the representation of past as well as current opinion and helps in
33

maintaining continuity in public policy.
There is also a growing opposition to the Second Chamber for various reasons, viz., (1) it may tend to be reactionary, over-conservative and check urgently-needed but radical reforms, (2) it may be instrumental in delaying legislation, (3) it tends to be undemocratic since it is very difficult to constitute a truly democratic Second Chamber on a different basis from the lower Chamber, (4) it is expensive to the country, and politically-backward countries also lack able statesmen to man a Second Chamber properly.
U.K and the
Dominions.
U.K.
Canada.
Australia.
All bicameral (Two Chambers).
House of Lords, (Upper House).

House of Commons, (Lower House).
Senate, (Upper House).
House of Commons, (Lower House).
Senate, (Upper House).
House of Representatives, (Lower House).
Senate, (Upper House).
South Africa. Senate,
U.S.A.
Switzerland.
Ireland.
21.
House of Assembly, (Lower House).
Bicameral Senate, (Upper House) and
House of Representatives, (Lower House).
Bicameral :
Council of States, (Upper House) and National Com
Federal Assembly, (Lower House).
Bicameral Seanad Eireann,_(Upper House) and
Dail Eireann, (Lower House
If bicameral, how should the two Houses be constituted?
[Note:
U.K.
The British House of Lords is of the traditional type.
Most of the members are hereditary peers. In addition
to these 16 are elected by the Scottish peers, for the duration of
each Parliament.
There are also some who are members of the House

by virtue of office: the Archbishops and Bishops, and the Law Lords.
Canada.
House of Commons: Entirely elected.
Senate (Upper House): Senators nominated for life. There
are 24 Senators from each of four territorial divisions:
Ontario, Quebec, the Maritime Provinces (including Prince Edward Island),
and the Western Provinces.
House of Commons (Lower House): Entirely elected, Quebec

returning 65 members and other Provinces in proportion to population relatively to Quebec.
Australia.
Senate (Upper House): Entirely elected directly through territorial constituencies. 6 Senators from each State, until Parliament otherwise provides.
House of Representatives (Lower House): Entirely elected; total number of members is as nearly as possible double the number of Senators and is distributed among the States according to population, with a minimum of 5 for any State,
South Africa. Senate (Upper House): Partly elected each Province electing 8 and partly nominated (8) by the Governor General in Council.
House of Assembly (Lower House): Entirely elected, the quota for each Province depending upon the number of its European adult Union Nationals.
U.S.A.
Senate (Upper House): Constituted on the basis of direct election, each State forming a constituency and electing 2 Senators.
House of Representatives (Lower House): Entirely elected.
Under the Constitution, the total number of representatives must not exceed one for every 30,000 of the population but each State shall have
35

36
-16-
at least one representative. The actual average representation at present is only one for every 300,000.
Switzerland.
Council of States (Upper House): Each of the Cantonal or half-Cantonal Units is free to determine the mode of election of its representatives. Direct election in 21 Units and election by Cantonal Legislatures in the other 4. Each Canton elects 2 Senators and each half-Canton one.
National Council (Lower House) : Constituted on the basis of direct election. Entirely elected. One member for every 22,000 of

the population.
Ireland.
Seanad Eireann (Upper House): Out of a total of 60 members,
11 are nominated by the Taoiseach (Prime Minister) and
the rest elected through electoral colleges to represent specified
functional interests.
Dail Eireann (Lower House): Entirely elected on the
basis of direct election. Not less than one member for every 30,000
of the population nor more than one member for every 20,000.7
22.
What provisions should be made for the adequate representation of
different communities and interests?
Note:
U.K.
Universities are given special representation.
South Africa. 4 elected and 4 nominated to represent native interests
in the Upper House. 3 seats allotted in the Lower House
for natives of Cape Colony.
U.S.A.
No provision.
Switzerland.
No specific provision,
The system of proportional
representation helps to secure the adequate representation

of different communities.
Ireland.
Provision made for the representation of functional.
interests such as "agricultural and allied interests
and fisheries" "Labour", "Industry and Commerce" in the Upper House;
system of proportional representation for the Lower House.]
23. What should be (a) composition, (b) franchise, (c) electorate,
(d) constituencies, (e) methods of election and (f) allocation of
seats in respect of the Union Legislature?
(a) Composition:
Note:

U.S.A.
House of Representatives: 435 members at present; under
the Constitution the total number must not exceed one
for every 30,000 of the population, but each State shall have at least
one representative. The actual average representation at present is only
one for every 300,000.
Switzerland.
.
Senate : 96 members (2 from each of the 48 States).
National Council (Lower House): Varies according to
population (1 member for every 22,000 of the population);
present strength - 194 members.
Council of States (Upper House): 44 members (2 members
each from 19 full Cantons, 1 each from the remaining 6 half-Cantons).
Ireland.
Dail Eireann (Lower House) : Varies according to population
(not less than one member for every 30,000 of the population
nor more than one member for every 20,000); present strength
Seanad Eireann (Upper House): 60 members.7
(b) Franchise:
Note:
U.S.A..
138.
For both the Houses, the franchise is the same as for the
37

38
-18-
State Legislature if unicameral, or for the Lower House of the State
Legislature if bicameral. Disqualifications on the ground of race,
colour or sex forbidden, Universal adult franchise in practice, subject
to certain minimum literacy qualification.
Switzerland.
Universal adult male franchise for the Lower House. Cantons
and half-Cantons free to fix the franchise qualifications
for the Upper House.
Ireland

Adult franchise for the Lower House, and indirect election
for the Upper House.]
(c) Electorates:
Note: No separate or special electorates in U.S.A. and Switzerland.
For Ireland see "Methods of Election"]
(d) Constituencies:
Note:
Single Member constituencies in U.S.A. Multi-member constituencies
for the Lower House in Switzerland and Ireland where election is by the
method of proportional representation.]
(e) Methods of Election:
Note:
U.S.A.
elected.
Switzerland
Single-member constituencies for both the Houses, the
person getting the largest number of votes being declared
Proportional representation for the Lower House. Each of
or half-Cantons
the Cantons/free to determine the mode of election for the
Upper House. Direct election in 21 Cantonal or half-Cantonal units and
election by the Legislatures of the units in the other 4.
Ireland.
Proportional representation for the Lower House.
Upper House election is indirect. Nominations to elected
For the

39
eats are made by recognised functional associations, members of the
Lower House, the Prime Minister, and persons who have held the office
of the Prime Minister or the President. Election is by an electoral
college composed of the members of the Dail Eireann and 7 persons
elected by each one of the Councils of the Counties or County boroughs.
Voting is by the method of proportional representation by means of single
transferable vote]
(f) Allocation of seats:
33

Note:
U.S.A.
Lower House: 435 seats distributed on the basis of
population, not exceeding one per 30,000 inhabitants,
but with a minimum representation of one for each State.
Upper House: 96 seats, two Senators per State.
Lower House:, One member for every 22,000 inhabitants,
but at least one member for each Canton or half-Canton,
Switzerland.
Ireland.
Lower House:
Allocation of seats as between
constituencies on the basis of population.
Upper House: Of the 60 members, 11 are nominated by the
Prime Minister, 6 are elected by the Universities, and the remaining
43 are elected from five panels of candidates constituted on a vocational
basis.]
24. What should be the term of the Union Legislature?
Note:
U.K.
Upper House; largely hereditary.
Lower House : 5 years, unless sooner dissolved.
Canada.
Upper House : Senators are nominated for life.
Lower House: 5 years.

Australia.
Upper House : Continuous, half retiring every three years,
term of membership being six years.
Lower House : 3 years.
South Africa. Upper House: Normal term 10 years.
U.S.A.
Lower House : 5 years.
Lower House: Two years.
Upper House: Continuous, one-third retiring every two

years, term of membership being six years.
Switzerland.
Lower House: 4 years.
Upper House : Each Canton or half Canton free to fix
the term of office of its representatives. Varies from 1 to 4 years.
Lower House: 7 years, unless sooner dissolved.
Ireland.
25.
A shorter period may be fixed by law.
Upper House: Same as for Lower House.]
If bicameral, what should be the relative powers of the two Houses?
What provision should be made to resolve deadlocks?
Note:
U.K.
Until 1911 the powers of the House of Lords were largely
co-extensive with those of the House of Commons. This
led to occasional conflicts between the two Houses and finally the
powers of the Upper House were curtailed by the
enactment of the
Parliament Act of 1911. At present, all money bills, so certified
by the Speaker of the House of Commons, if not passed by the House
of Lords without amendment, become law without their concurrence on
Public bills, other than money bills
the Royal assent being signified.
or a bill extending the maximum duration of Parliament, if passed by
the House of Commons in three successive sessions, whether of the same

Parliament or not, and rejected each time, or not passed by the House of
Lords, may become law without their concurrence, on the Royal assent
being signified, provided that two years have elapsed between the
second reading in the first session of the House of Commons and the
third reading in the third session. All bills coming under this Act
should reach the House of Lords at least one month before the end of
the session.

Canada.
to those of the
The powers of the Canadian Senate are, in law, equal
lower House, excepting that money bills must originate
in the House of Commons, and convention requires that they may be
rejected but not amended.
There are no adequate means to adjust
differences between the two Houses: all that the framers
of the
Constitution have done for this purpose is to provide for the
Senate, but since the total
appointment of additional members to the
strength of the House cannot exceed 104, the maximum number that
can be nominated at any time to resolve differences is 8.
Australia.
The Senate has equal powers with the House of Representa-
tives in respect of proposed laws except that money
bills must originate only in the lower House and cannot be amended
by the Senate. The Senate may, however, at any stage return to the
House of Representatives any proposed law which the Senate may not
amend, requesting by message, the omission or amendment of any items
But if there is a deadlock between the two
or provisions therein.
Houses, the Senate can force the dissolution of both the Houses even
in regard to money bills. But such dissolution shall not take place
within 6 months before the date of the expiry of the House of
Representatives by effluxion of time.
If the deadlock continues even

after the reconstituted Houses meet, it is resolved by a joint sitting
of the two Houses. A majority of the total number of the members of
the Senate and the House of Representatives is required for the measure
to be passed into law.
South Africa. The South African Senate has only limited powers and is
essentially a "House of review". Money bills must originate in the House
of Assembly only. The Senate may not amend any bill which imposes

taxation or appropriates revenue or monies for the services of the government, nor can it amend any bill so as to increase any proposed charges or burdens on the people. If there is a difference of opinion between the two Houses, the constitution provides for a joint sitting, at which a majority of the members present
a majority of the total number of members
and not, as in Australia,
is required for the bill to
be passed into law. In the case of a money bill, the joint session is convened during the same session; in the case of other bills, during the second session of the Legislature.

U.S.A.

The Upper House has all the powers of the Lower House and a few more. Its consent is required for the appointment of Ambassadors, Judges and other high officials and it has the sole power to try all impeachments. Its consent by a two-thirds majority is required for the conclusion of all treaties. A Joint Conference Committee tries to iron out differences, but no provision is made in the Constitution for resolving deadlocks.

Switzerland.

The two Houses have co-ordinate powers. In cases of difference of opinion, the respective Committees of the two Houses try to arrive at a compromise, but no provision is made in the Constitution for resolving deadlocks.

Ireland.

27

The Upper House has a suspensory veto for a period of only 90 days in respect of bills other than money bills or urgent bills. If it has the support of one-third of the members of the Lower House, it can ask the President for a referendum to ascertain the will of the people and the President, in consultation with the Council of State, may grant the request. This procedure does not apply to bills. proposing to amend the Constitution.]

D.

Judiciary.

26. Should there be a separate chain of courts to administer Union Laws?
Note: In U.S.A., there is a separate chain of Federal Courts, but not in Canada, Australia or Switzerland.

U.S.A.

Under the constitution the judicial power of the United States is vested in a Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. There are, at present, two sets of inferior federal courts, namely, the Federal District Courts and the Circuit Courts of Appeal. The country is
43
divided into 83 districts, each State constituting at least one. district. From the Federal Courts of these districts there is an appeal to Circuit Courts, which are ten in number. There are also two special courts, namely, the Court of Claims and the Court of Customs Appeals. In certain cases, however, the State courts may be, and are, permitted, in the exercise of the jurisdiction vested in them by the Constitution or laws of their respective States, to deal with causes which are within the federal judicial power. But their jurisdiction in such cases may be qualified by the right of the defendant to have the cause removed before

44

trial into a Federal Court, or after trial the case may be taken by appeal to the Federal Supreme Court.

Australia.

The judicial power of the Commonwealth is vested in a Federal Supreme Court, called the High Court of Australia, and "in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction." The Parliament is also empowered to make laws investing any court of a State with federal jurisdiction. Thus, the constitution has left to the discretion of the Parliament the determination of the degree to which the agency of the State courts is to be utilised for the administration of federal laws. Under the Judiciary Act of 1903, as amended from time to time, the several courts of the States are vested with federal jurisdiction in matters not within the exclusive jurisdiction of the High Court, and there is a right of appeal from these courts to the High Court.

Canada.
Under the constitution the Canadian Parliament is empowered to establish a General Court of Appeal for Canada and other courts for the better administration of the laws of Canada. In the exercise of these powers,
the Canadian Parliament has set up a Supreme Court of Appeal and an Exchequer Court. In other respects, the administration of justice, including the constitution, maintenance and organisation of civil and criminal courts and civil procedure is a Provincial subject while criminal law and procedure are assigned to the Federation. It may be noted that the Constitution vests the Governor-General with power to appoint the Judges of the superior, district, and county courts of each province, subject to certain exceptions]

E.
Amendments to the Constitution.
27. What provisions should be made regarding amendments to the Constitution?
Note:
U.K.
The British Constitution can be altered by an Act of Parliament.
Canada.
The constitution of the Dominion of Canada can only be amended by the Parliament of Great Britain. The Constitution Act itself does not contain any provision regarding such amendments and the Statute of Westminster clearly lays down.
that it should not be deemed to apply to the repeal, amendment or alteration of the "British North America Acts", 1867 to 1930, or any order, rule or regulation made thereunder. As a matter of form, changes in the constitution have been carried out on addresses from the two Houses of the Dominion Parliament; but this would be difficult if the measure were opposed by one or more of the provincial legislatures. It may be noted that the last of the amendments to the constitution, passed in 1907, was based on

the assent of all the provinces: British Columbia demanded better terms but finally agreed to the passing of the measure.
Australia.
A proposal to amend the constitution must be passed by an absolute majority in each of the two Houses, and, not less than 2 nor more than 6 months after its passage through both Houses, must be submitted in each State to the electors of the House of Representatives (Lower House). But if an amendment proposed by an absolute majority of one House is not agreed to
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Page - 48
46
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-26-
by the other House, and if after an interval of three months, the amendment is again proposed by the first-mentioned House and again not agreed to by the other House, the Governor-General may submit the proposed amendment to the electors in each State. The proposed amendment cannot become law unless it is approved by a majority of electors voting and by a majority of the States. No amendment (1) diminishing the proportionate representation of any State in either House of Parliament (2) diminishing the minimum number of representatives of a State in the House of Representatives (3) increasing, diminishing, or otherwise altering the limits of a State and (4) affecting the provisions of the constitution in relation to the foregoing matters, may be carried unless the majority of the electors voting in the State interested approve of the proposed law.
Union of South Africa.
Except in regard to certain "entrenched" provisions the Union Parliament may by law repeal
As
or alter any of the provisions of the Constitution Act.
regards the excepted provisions, viz.,Section 35 (protection of the Cape native franchise), Section 137 (equality of English, Dutch and Afrikaans languages), Section 152 (amendment of the

Constitution Act) proposals to amend them should be passed at a Joint Session of both Houses of Parliament, and at the third reading receive the assent of not less than 2/3rds of the total number of members of both Houses.

U.S.A.

In the Constitution of the United States, two methods of originating amendments are provided, and there are also two methods of enacting amendments, when so originated.

Page - 49

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When

In the first place, Congress itself may, by a two-thirds majority in each House, draft and propose amendments; in the second place the legislatures of two-thirds of the several States may apply to Congress to call a convention for the purpose of proposing amendments. amendments are proposed by Congress, or by a constitutional convention, they have to be submitted to the States, and ratified in three-fourths of the States, either by the State legislatures or by State conventions specially elected in each State for the purpose.

Switzerland. There are several methods by which revisions of the Constitution may be originated and ratified. A total revision of the Constitution may be brought about in three ways: (1) The National Council and the Council of States may agree to an amendment, as in the case of an ordinary federal law. The Constitution, as drawn up by the two Houses, must then be submitted to the popular vote, and if it is approved by a majority of the people and by a majority of the Cantons, it becomes law. (2) If one House votes for a total revision and the other refuses its assent, the question is then submitted to the electors in each Canton or half Canton, wish the Constitution to be revised - Yes or No?" If the majority of electors vote "Yes" in support of a revision, the two Houses are then dissolved, and a new Federal Assembly is elected charged

Do you

with the work of revising and drafting a new Constitution. When this has been prepared, it is submitted to the popular vote, and if it is approved by a majority of the people and by a majority of

the Cantons it becomes law. (3) If 50,000 citizens sign a petition in favour of a total revision of the Constitution, it is the duty of the Executive to submit the question to the electors,

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28
"Do you wish the Constitution to be revised--Yes or No?"
majority of the electors decide in favour of revision, the Federal Legislature has to carry out the popular wish, and
If a
revise the Constitution for submission to the people. If on such submission it is approved by the required double majority it becomes law.

There are two methods by which a partial revision or a partial amendment of the Swiss Constitution may be brought about. An amendment may be proposed by the two Federal Houses, as in the ordinary process of legislation. It must then be submitted to and accepted by a majority of the people and by a majority of the Cantons. A demand for the adoption of a new article, or the alteration of an old one, may be made in writing by 50,000 Swiss citizens in the same way as a demand for a total revision. If the Federal Legislature agrees with the demand of the petitioners it proceeds to formulate the required amendment and prepare it for submission to the people. If on the other hand it disagrees with the demand the question is submitted to the people, "Are you in favour of a revision of the Constitution--Yes or No?" If a majority of the people decide in favour of a revision it becomes the duty of the Federal Legislature, acting as a Drafting Committee, to prepare the required amendment for submission to the people. It is then submitted to the popular vote, and if it receives the support of the required statutory
The final
majority of people and of Cantons, it becomes law.
referendum is obligatory in every proposal to amend the Constitution.

Page - 51
-29-
49
In reckoning a majority of the Constituent Units, the vote of
a half Canton is counted as half a vote.
Ireland.
Every proposal for amending the constitution must
be initiated in the Lower House as a bill, and
after it is passed by both the Houses of the Legislature,
submitted to the people for their decision.
The bill is held
to have been approved by the people if the majority of the votes
cast is in favour of its enactment, and it becomes law after it
is signed and promulgated by the President in due form.]

Page - 52
From
SNO: 1646
44
50
No. CA/40-Gen/46.II
CONSTITUENT ASSEMBLY OF INDIA.
Council House,
New Delhi, the 3rd January, 1947.
To
H.V.R. Iengar, Esq., C.I.E., I.C.S.,
Secretary.
All Members of the Constituent Assembly.
Sir/Madam,
I am directed to enclose, for your information, a copy
of the rules for admission to visitors' galleries which have been
approved by the President.
G.
Enc.l
I have the honour to be,
Sir/Madam,
Your most obedient servant,
HP

(H.V.R. I ENGARY
SECRETARY.

455
CONSTITUENT ASSEMBLY OF INDIA.
Rules for the admission of Visitors to the Galleries
of Constitution Hall.
The President of the Constituent Assembly has been pleased to make the following rules for the admission of visitors to the galleries of Constitution Hall during the public sittings of the Constituent Assembly:-
1. Ordinarily there shall be two classes of Galleries, namely:-
(a) Distinguished Visitors' Gallery;
(b) Public Gallery.
2. Admission to the Distinguished Visitors' Gallery and the Public Gallery shall be by cards to be issued by an order of the Secretary.
3. Applications for admission cards for the Public and the Distinguished Visitors' Galleries must be made to the Secretary, only through Members, for persons who are personally known to them, or, in select cases, for those who have been introduced to Members by persons who are personally known to them.
4. Applications for the admission cards for each day's meeting shall be made separately on the printed forms prescribed for this purpose.
5. Applications for cards should be submitted two clear days before the commencement of the meeting for which the applications are made. Such applications should be handed over to the Notice Office by 5 P.M. on all working days except Saturdays when the latest time for the receipt of the applications will be 1-30 P.M. In exceptional cases, where a pass is required for the wife or near relation of a Member, a clear notice of 24 hours only will be necessary.
6. Applications which do not supply in full the particulars required in accordance with the printed instructions on the application forms will not be complied with.

7. Admission cards to the galleries will be issued for a
single meeting and will be available only for that meeting.
will not be transferable and shall in no circumstances be passed
They
on to unauthorised persons. They will be issued subject to the
holder observing any conditions endorsed on the admission card.
8. With a view to preventing unauthorised persons from coming
into possession of application forms and then submitting them with
forged signatures of the members of the Constituent Assembly, blank
forms of application for admission cards to the galleries will be
given to the Member who asks for these forms, or to his Private
Secretary or clerk known to the onstituent Assembly office.
9. In order to eliminate, as far as possible, applications
with forged signatures, Members should hand in their applications
personally at the Constituent Assembly Notice Office. When this is
not possible, Members should send their application forms duly
filled in and signed by them through their Private Secretaries or
clerks known to the Constituent Assembly office. If they are unable
to comply with the ordinary procedure, and send their applications
through the post or a messenger not known to the Constituent Assembly
Office, they should state the reason (on the back of the applications
forms) why the applications were not made in the ordinary way. No
action will be taken on such applications if this condition is not
observed.

G.
-2-
46 (52
10. Admission cards when ready will be handed over either to the
Members applying for them or sent to their residential addresses
but will NOT in any case be made over to visitors for whom they
are required. When cards are delivered at their residences,
Members should acknowledge their receipt in the peon book, or if
they are out should arrange that some responsible person does so
on their behalf.
11. The President may, at any tire, suspend these rules for a
particular meeting or meetings and substitute any special rules

which he may deem fit in their place.
12.
The President may, in his discretion, cancel any admission card to any of the Galleries.
13.
Any matter not provided for in these rules shall be regulated by the President in his discretion.

Page - 55
To
SUBJECT:
SIR,
SNO.1647
CONSTITUENT ASSEMBLY OF INDIA
CIRCULAR No. CA/4/ASY/47
•
475
New Delhi, the 9th January, 1947.
ALL MEMBERS OF THE CONSTITUENT ASSEMBLY
Procedure regarding correction and return of speeches by Members
With a view to securing early and accurate reports of the Proceedings of the meetings of the Constituent Assembly the following instructions are issued for the guidance of Membors, who are requested to comply with them as closely as circumstances permit:-
(1) A typed copy of the speeches as taken down by the Official Reporters, will ordinarily be forwarded to them for approval on the same evening on which they are delivered, and must be returned, approved, within 24 hours, to the Editor of Debates. In the event, of a speech not being returned within that period, the duplicate, typed copy will be utilized. Speeches written in whole or in part and read in the Assembly should invariably be supplied to the Official Reporters, and such speeches will not again be sent to the Members concerned for approval.
(2) Copies of quotations should invariably be supplied to the Reporters, except in cases where the page, etc., of some well-known Report, which is readily available, has been specifically referred to.
(3) In the case of classical quotations, slokas, etc., the transliteration in English of the quotation, followed by its meaning (if this has not already been given) should be filled in by the Member when his speech is sent to him for

approval.
(4) Members are reminded that the Official Report is intended to be a correct reproduction of the speeches actually delivered by them in the Assembly, and that typed copies of the speeches are sent to them for approval only for the purpose of correcting any inaccuracies, which may have occurred in the process of reporting, and not for the purpose of improving their literary form or of altering or adding to their substance. Corrections, if any, should be made neatly and legibly, and in ink, as it is difficult to incorporate undecipherable corrections in the printed proceedings.
I have the honour to be,
SIR,
Your obedient servant,
H. V. R. IENGAR,
Secretary of the Constituent Assembly.
GIPD-L-111CA-10-1-47-500.

Page - 56
G.
From
To
No. CA/1(2)-Ser/47.
SNO.1648
CONSTITUENT ASSEMBLY OF INDIA.
(54)
48
Council House,
New Delhi, the 6th January, 1947.
H.V.R. Iengar, Esqr., C.I.E., I.C.S.,
Secretary.
All Members of the Constituent Assembly.
Subiect: Residential accommodation for members
of the Constituent Assembly.
Dear Sir/Madam,
I enclose a copy of a note on the Housing
position submitted to the President, which has been approved
by him.
2.
I am to express regret at the inconvenience.

that will be caused to those members who were hoping to get houses during the next session of the Constituent Assembly, but will not be able to get any due to the circumstances explained in the note. As members are no doubt aware, the Constituent Assembly has control only over the accommodation available in Constitution House. For other accommodation, it has to compete with the claims of other authorities; and so far as M.L.A. and Council of State quarters are concerned, the rights of members belonging to those bodies have overriding priority.

3.

I am accordingly to request that those members (other than Prime Ministers and Ministers of Provinces who are being allotted M.L.A. quarters; and members who are also members of the Central Legislature and are in that capacity in possession of M.L.A. quarters) who occupied M.L.A. quarters including those in Western Court during the last session, but will not be allotted any for this session, should immediately indicate to the Estate Officer by telegram, if possible, their preference (three preferences, first, second and third) of the following accommodation: -

(a) Constitution House.
(b) Pataudi House.
(c) Western Court.
(d) Kotah House.
(e) Private hotels, e.g. Marina, Maidens, Cecil, etc.

Yours faithfully,
Enc,1
(H.V.R. ENGAR).
SECRETARY.

CONSTITUENT ASSEMBLY OF INDIA.
Subiect: Residential accommodation for members of the Constituent Assembly.
49
SS

For the last session of the Constituent Assembly, it was possible to allot 38 M.L.A. Quarters to the members of the Constituent Assembly other than those who were also members of the Central Legislature. Out of these only 30 were actually occupied as the Muslim League members did not attend. This allotment was possible because it was the off-session period of the Central Legislature, and there was a sufficient gap between the dates fixed for the close of the Constituent Assembly and the commencement of the Legislative Assembly, session.

2.

These conditions do not apply now. The gap between the close of the next session of the Constituent Assembly and the commencement of the Budget session of the Legislative Assembly may be a bare three days, or even none at all. It is, therefore, not possible to allot houses meant for members of the Legislative Assembly to members of the Constituent Assembly (unless they happen to be also members of the Central Legislature). It is, however, possible to allot some of the houses meant for members of the Council of State to our members, as the Council of State will not meet till the middle of February.

Only 15 Council of State quarters are available for allotment to our members for the next session. To this number we had hoped to add 10 more quarters, which are due to be vacated by officers occupying them, as new houses are being built for them elsewhere. It is, however, not advisable to rely on the completion of these new houses in time for the transfer being effected during the next session of the Constituent Assembly. On inspection of the new houses by the Deputy Secretary, he found that they were still in a very incomplete state, and in his opinion, it will take at least a month before they will become habitable. This may make it too late for our purposes.

3. In view of the seriousness of the housing position, a special meeting of members of the House Committee, who are present in Delhi, was held this morning. Unfortunately, only Mrs. Ammu Swaminathan and Mr. Mohanlal Saksena were able to be present. On the position being explained to them, they agreed that the only action possible was:

(a) that the available M.L.A. quarters should be allotted to the

Premiers and Ministers of the Provinces as shown in the margin, (b) that all the others (including those allotted houses during the last session) should be informed that in view of the position stated above, it will not be possible to allot M.L.A. quarters to any person other than Premiers and Ministers of the Provinces. Those who were not allotted houses will be accommodated, as far as possible, in the same rooms as were given to them during the last session; and those who were allotted houses should be asked indicate their preference from the accommodation available in Constitution House, other Hostels and Hotels. Details of this will be indicated to them.

to		
Total number of Premiers and Ministers.		
Bombay does not want.	1	
U.P. which has 4 Ministers wants only 2 quarters.		
N.W.F.P. One	2	
Minister. Did not stay last time in M.L.A. quarter.		
Actually required.		
18		
1		

4
14.
P.T.O.

Page - 58
4.
-2-
(c) The one quarter left over under (a) above, and the 10 quarters (mentioned in para. 2 above), if available in time, shall be allotted to persons who have a special claim on them due to physical infirmity or illness.
If the President approves, the members concerned will be informed in terms of this note.
G.
Hon'ble the President.
Yes.
Sd/- R. Prasad.
5/1/47.
Sd/- H.V.R. Iengar.
Secretary.
4-1-1947.

Page - 59
To
SNO. 1649
St
Circular No. CA 2/Ser/46.
CONSTITUENT ASSEMBLY OF INDIA
Sir,
All Members of the Constituent Assembly of India.
2181
New Delhi, the 20th October 1946
SUBJECT:-Travel and other facilities for members of the Constituent Assembly
With a view to relieve you from unnecessary trouble, as far as possible, in making

arrangements for your journeys to and from Delhi for meetings of the Constituent
Assembly, we have arranged with MESSRS. GOVAN BROTHERS, LTD., SCINDIA HOUSE, CONNAUGHT CIRCUS, NEW DELHI, to act as our official travel agents for the purchase of tickets, reservation of accommodation in trains and air
services, etc.

2. They will also receive Members at the stations, if desired, and provide transport from the station to the place of residence and vice versa; arrange sight seeing
trips and provide transport for other purposes in Delhi.

For performing the duties mentioned above in Delhi, they will station a trained man a few days before the Assembly session starts, and till a few days afterwards, at
Constitution House (where the bulk of the Members are expected to choose to stay)
in order to be in direct touch with the Members and the management of Constitution
House.

They will not make any extra charges for all these Services. Members will only have
to pay the actual cost of the transport provided.

3. Members who desire to avail themselves of the facilities mentioned above are advised to contact in good time the Head Office of Messrs. Govan Brothers, Ltd., or any of their branch offices at the addresses given below, so that arrangements
for their travel, reception, etc., may be made well in advance :-

NEW DELHI

MADRAS

BOMBAY

CALCUTTA

KARACHI

LAHORE

Messrs. Govan Bros. Ltd., Passage Deptt., Head Office, Scindia
House, Connaught Circus.
Telegrams: 'GOVBRO'. Telephone: 7682.

Messrs. Govan Bros. Ltd., Passage Deptt., Bharat Buildings, Mount
Road.
Telegrams: 'GOVBROS'. Telephone: 3745.

"
The American Express Company, Inc., Travel Dept., "Navsari
Building (I Floor), 240, Hornby Road, Post Box No. 507.
Telegrams: AMEXCO". Telephone: 25295.
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66
The American Express Company, Inc., Travel Dept., P. O. Box No.
2311, "Pollock House 28, Pollock Street.
ود
9
Telegrams: "AMEXCO ". Telephone: 2096.
The American Express Co., Inc., Travel Dept., P. O. Box No. 533,
"Oriental Building", McLeod Road.
Telegrams: "AMEXCO ". Telephone: 3461.
Messrs. Govan Bros. Ltd., 3, Sir Ganga Ram Trust Building,
The Mall.
Telegrams: "GEOFMANCO" Telephone: 2988.

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2
4. The Railway Department (Railway Board) have suggested that it would facilitate the work of the various Railway Administrationsif the authorities concerned
are given advance notice for reservation of accommodation on railways in good time, and that in case any difficulty is experienced in securing accommodation, the matter should at once be reported to th General Manager of the Railway concerned in the first instance, instead of througe office of the Constitutional Adviser or the Railway Board. This will elim lay and permit prompt action being taken to remedy defects.
5. The Railway Administrations have i
extend in your favour the period in advance
ked by the Railway Board to
actual date of travel within
which tickets may be purchased to 30 days, so as to enable you to secure early reservation.
GIPD-S1-30 CA-18-10-46-500.

I have the honour to be,
Sir,
Your obedient servant,
H. V. R. IENGAR,
Secretary, Constituent Assembly.
7682

Page - 61
From
SNO.1650
No.CA/3/Ser/46
CONSTITUENT ASSEMBLY OF INDIA.
55
59
Council House,
New Delhi,
the 22nd December, 1946.
To
Khan Bahadur S.G.Hasnain,
Under Secretary.
All members of the Constituent Assembly.
SUBJECT:- Ration Cards for Delhi.
Dear Sir/Madam,
I am to invite your attention to para. 4 of this office Circular No. CA/3/Ser/46%; dated the 1st November, 1946, and to request that before your departure from Delhi the Ration Cards may be returned to this office for transmission to the Rationing authorities or to the following address direct:
Rationing Office,
Circle No. 15,
3, Aurangzeb Lane,
NEW DELHI.
Yours faithfully,
Hasnan
(S. G. HASNAIN)
Under Secretary.

Hvr/
From
SNO 1651
CIRCULAR LETTER
59f
No.CA/13/Ser/46.
CONSTITUENT ASSEMBLY OF INDIA
Council House,
New Delhi, the 6th January 1947.
To
B.F.H.B. Tyabji, Esq, I.C.S.,
Deputy Secretary.
All Members of the Constituent Assembly.
Subject:- TRANSPORT FACILITIES FOR MEMBERS OF THE CONSTITUENT ASSEMBLY.
Dear Sir/Madam,
A reference is invited to this Office Circular letter No.CA/13/Ser/46, dated the 19th December, 1946, which explained why the bus service between Constitution House and Council House had to be discontinued. It has since been suggested that good advantage of this service could not be taken by Members as it was arranged rather late in the session, and that it should be restarted for the next Session.
2.
As the Transport Coy were put to financial loss. on the last occasion, they are reluctant to restart the service, unless they are assured of a reasonable amount of traffic. Will you, therefore, please inform this Office whether, if the service is restarted during the next session, you would like to use it...
I have the honour to be,
Sir/Madam,
Your most obedient servant,
(B.F.H.B.TYABJI)
Deputy Secretary

SNO 1652
61
55
CONSTITUENT ASSEMBLY OF INDIA
ORDERS OF THE DAY
for the meeting of the Constituent Assembly to be held on Monday, the 28th April, 1947, at 11 a.m.
1.
PRESENTATION OF CREDENTIALS
Members who have not already presented their credentials and signed the Roll of Members may do so.
2.
MOTIONS
**
Copy of
Report
attached.
(1) THE HONOURABLE PANDIT JAWAHARLAL NEHRU to move the following Motion:-
**
The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.
The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.
(2) SHRIMATI G. DURGABAI to move the following Motion:-
Resolved that this Assembly do proceed to elect, under sub-rule (2) of rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.
New Delhi,
April 24, 1947.
H.V.R.IENGAR
SECRETARY

Page - 64
62
56
CONSTITUENT ASSEMBLY OF INDIA.
SUPPLEMENTARY ORDERS OF THE DAY
for the meeting of the Constituent Assembly to be held on
Monday, the 28th April, 1947, at 11 a.m.
Presentation of the Report of the Committee
appointed by the resolution of the Constituent
Assembly of the 25th January, 1947, to examine the
scope of Union Subjects
SIR N. GOPALASWAMI AYYANGAR.
BY THE HONOURABLE
New Delhi,
April 25, 1947.
H.V.R.IENGAR
Secretary.

Page - 65
[
CONFIDENTIAL
CONSTITUENT ASSEMBLY OF INDIA.
Report of the Committee appointed to negotiate with the States Negotiating Committee
By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, viz. oo jooked
(1) The Hon'ble Pt. Jawaharlal Nehru
(2) The Hon'ble Maulana Abul Kalam Azad
(3) The Hon'ble Sardar Vallabhbhai J. Patel
(4) Dr. B. Pattabhi Sitaramayya
(5) Mr. Shankarrao Deo.
(6) The Hon'ble Sir N. Gopalasawami Ayyangar
were appointed as a Committee to confer with the Negotiating Committee set up by
the Chamber of Princes, and with other representatives of Indian States, for the pur-
pose of
(a) fixing the distribution of the seats in the Assembly not exceeding 93 in

number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,
(b) fixing the method by which the representatives of the States should be returned to the Assembly,
as we
and thereafter to report the result of such negotiations. By a further resolution passed
on the 21st January 1947, we were empowered to confer with such persons thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the
negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the
scope of subjects to be negotiated between the two committees. It was urged by the
States Negotiating Committee that there had been no decision yet on the part of the
States to enter the Constituent Assembly, and that it would not be possible for them
to decide this issue till they received satisfactory assurances on a number of points
mentioned in the resolution adopted on the 29th January, 1947, by the General Con-
ference of Rulers (Appendix A). On the other hand, we pointed out that most of those
points could only be discussed by a fully constituted Constituent Assembly including
the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down
in the resolution of the Constituent Assembly passed on the 21st December, 1946.

But while we were not prepared as a committee to discuss matters going beyond our
mandate, we raised no objection to discussing, in a friendly and informal manner as

individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared
in the course of these discussions were summarised by Pandit Nehru as follows:-
"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement Apart from the legality of that Statement, one thing also
Seems to me obvious, namely, that the scheme is essentially a voluntary one, where no
up
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Page - 66
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compulsion, except, as I 'said, compulsion of events, is indicated. No doubt, so far
as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout...
"Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government.
That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on
our behalf in the Constituent Assembly as outside that we have no objection to it, we
accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.
"Another point that we raised in our discussion yesterday was about some apprehen-
sion about territorial readjustments. I tried to point out that the Resolution passed by
the Constituent Assembly had no reference in the minds of those who framed the

Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their ay at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's Statement specifically says. The Cabinet Mission's Statement said: "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest co-operation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send

three representatives and that these should be elected by the Dhara Sabha (the State
legislature) on the principle of proportional representation, by means of the single
transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947.

At this meeting we urged that H.M.G.'s declaration of the 20th February had introduc
ed an additional element of urgency in our task and that it would be greatly to the
advantage of the States no less than to the British Indian representatives in the Con-
stituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May
which operated as a bar against States doing so. We also suggested that it would
be to our mutual advantage if States' representatives could function forthwith on
some of the committees set up by the Constituent Assembly, particularly the Union
Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps
in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allot-
ted to the States. The Committees approved of the distribution as proposed by the two Secretariats (Appendix B) and authorised the making of such minor modi-
fications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose.

Eventually, after a consideration of the sub-committee's report, the following for-
mula was accepted by both Committees, viz, that not less than 50% of the total

representatives of States shall be elected by the elected members of legislatures or,
where such legislatures do not exist, of other electoral colleges. The States would
endeavour to increase the quota of elected representatives to as much above 50%
of the total number as possible.
This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution passed by the Conference is attached (Appendix C). // We pointed out that in regard to two States, viz., Hyderabad and N.P
Kashmir elections to their legislatures had been boycotted by important organisa-
tions representing the people of the States concerned, and the legislatures there-
fore could not be considered to represent the people as they were intended to do.
In the cases of these two States, we suggested that a suitable method of electing
repreesentatives for the Constituent Assembly should be devised. The Chancellor
said that he would communicate the suggestion to the States concerned.
8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Gopalaswami Ayyangar; (3) Sir V. T. Krishnamachari ; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time, and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats
at the forthcoming session of the Assembly The States of Patiala, Udaipur,

Gwalior
and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.
NEW DELHI;
24th April 1947.
JAWAHARLAL NEHRU.
A. K. AZAD.
VALLABHBHAI PATEL.
N. GOPALASWAMI.
SHANKARRAO DEO.
B. PATTABHI SITARAMAYYA.

APPENDIX A
TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1-47
1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up
of, the proposed Union of India in accordance with the accepted plan; and declares:-
(a) that the following fundamental propositions inter alia form the basis for the States' acceptance of the Cabinet Mission's plan-
(i) The entry of the States into the Union of India in accordance
with the accepted plan shall be on no other basis than that of
State.
negotiation, and the final decision shall rest with each
far as the States are
The proposed Union shall comprise, so
concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.
(ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new

Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.

(iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.

(v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government.....in British India, or failing this, entering into particular political arrangements with it."

(b) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His

Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body

competent under the Cabinet Mission's plan to conduct preliminary negotiatitons on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to it.

(c) that while the distribution inter se of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting-

(a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes n consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and

(b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which inter alia associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament, in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

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APPENDIX B
NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES
1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended
as a basis of discussion for the Committees concerned.
2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourths
or more counting as one and lesser fractions being ignored. In the case of groups,
fractions of more than half have been counted as one, lower fractions being ignored
3. States so desiring may pool or share their proportion of the allotted repre-sen ation, whether individual or grouped, with that of any other State or group of
States by mutual agreement, provided :-
--
(a) that the total representation of the States and/or the groups affected is not disturbed, and
(b) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.
ANNEXURE
A
SINGLE STATERS
Division as shown in the
Table of Seats appended
to Part II of the First
Schedule to the Govt. of
India Act, 1935
1
Name of State
Population

in
millions.
2
3
Number of
seats in the
Constituent
Assembly
I .
Hyderabad
16.33
16
7.32
7
II.
Mysore
4.02
4
III.
Kashmir
4.00
4
IV
Gwalior
2.85
V
Baroda
6.07
6
IX
Travancore
1.42
1
IX
Cochin
1.92
X .
Udaipur
3.04

3
X.
Jaipur
2.55
2
X.
Jodhpur
1.29
1
X.
Bikaner
0.82
1
X.
Alwar
0.77*
1
X.
Kotah
1.51
1
Indore
XI
0.78
1
XI
Bhopal
1.82
2
XI
Rewa

XIII
XIV
XIV
XVI
70

(7
1
Kolhapur.
Patiala
6
Bahawalpur
Mayurbhanj
e
2
3
1.09
1
1.93
2
1.34
1
0.99
1
20
61-86
60
B
FRONTIER GROUPS
Division
Names of States in the Group
Population in
millions
Number of
seats in the
Constituent
VI.
Kalat
Las Bela
Kharan
Assembly
0.25
0.07
0.03 0.66
1

0.31
XIV
Khairpur
VII
Sikkim.
0-12
XV
Cooch Behar
0.640.76
1
XV
Tripura
7 0.511
XV
Manipur
0.51 1.23
1
XVII
Khasi States.
XVII
Amb
0.21]
0.05
XVII
Chitral.
0.10
XVII
Dir
0.25 0.67
1
XVII
Swat
0.26
XVII
Phulra.
J 0.01 J
3.32
4

INTERIOR GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
VIII	0		
	Rampur		
	Benares		
IX	Pudukottai		
	Banganapalle		
	Sandur		
M	Bharatpur		
	Tonk		
	Dholpur		
(13 States)			
XI .	Karauli		
	Bundi		
	Sirohi		
	Dungarpur		
	Banswara		
	Partabgarh		
	Jhalawar		
	Jaisalmer		
	Kishengarh		
	Shahpura		
XI.			
(26 States)			
	Datia		
	Orchha		

Dhar
Dewas (Senior)
Dewas (Junior)
Jaora
Ratlam
Panna
.
Samthar
Ajaigarh
Bijawar
Charkhari
Chhatarpur
Baoni
Nagod.
Maihar
Baraundha
Barwani
Ali Rajpur
Jhabua.
Sailana.
Sitamau
Rajgarh
XVII
Narsingarh
Khilchipur
Kurwai
::}
0.93
0.49
2.86
55
Gl
Included in resi-
duary Group
XVII below.
3.1. 3
TUX

XII.
72
vi
Division
Names of States in the Group
Population in millions
Cutch
Idar
Nawanagar
(16 States)
Bhavnagar
Junagadh
Dhrangadhra
Gondal
Porbandar
Morvi
Radhanpur
Wankaner
Palitana
Dhrol
Limbdi.
Wadhwan
Rajkot.
3.65
Number of seats in the Constituent Assembly
XII-A
0
Rajpipla
Palanpur
Cambay
Dharampur
Balasinor
Baria
Chhota Udepur

(15 States)
Sant
1.69
2
Lunawada
Bansda.
Sachin
XIII
•
Jawhar.
Danta
°
Janjira
Jafrabad
XIII
•
Sangli
Savantvadi
Mudhol
Bhor
Jamkhandi
Miraj (Senior)
(14 States)
Miraj (Junior)
Kurundwad (Senior)
Kurundwad (Junior)
XIV.
(14 States)
Akalkot
Phaltan
Jath
Aundh
Ramdurg
•
Kapurthala
Jind
Nabha
Mandi
Bilaspur

Suket
Tehri-Garhwal
Sirmur
Chamba
Faridkot
XVII
Malerkotla
Loharu.
Kalsia
Bashahr
1.56
2.70

vii
Division
Names of States in the Group
Population in
millions
XVI.
Sonepur
Patna
Kalahandi
Keonjhar
Dhenkanal
Nayagarh
Talcher
(25 States)
XVII
Nilgiri
Gangpur
Bamra
Seraikela
Baud
Bonai
Athgarh
Pal Lahara
Athmalik

Hindol
Narsingpur
Baramba
Tigiria
Khandpara
Ranpur
Daspalla
Rairakhol
Kharsawan
XVI-A
Bastar
Surguja
Raigarh
Nandgaon
Khairagarh
Jashpur
(14 States)
Kanker
Korea
Sarangarh
XVII
XVII
95
Changbhakar
Chhuikhadan
Kawardha
Sakti
Udaipur
4.25
2.81
States
4.26
All other States including three mentioned in Division IX, viz., Pudukottai, Banganapalle, and Sandur.
67
73
Number of seats in the

Constituent
Assembly
BO
27.82
29

Page - 76
74
viii
APPENDIX C
TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON 2-4-47
1. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing
an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by
the General Conference of Rulers and representatives of States on January 29, 1947.
2. It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly
in regard to the allocation of the States' quota of seats in, and the method of selec-
tion of the States representatives to, the Constituent Assembly, and on the funda-
mental points discussed at their meetings held on February 8 and 9 and on March 1
and 2, subject to the acceptance of the aforesaid understanding by the Constituent
Assembly.
3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so
desire, may join the Constituent Assembly at the appropriate stage when that Assem-
bly meets, in accordance with the Cabinet Mission's plan to settle the Union

consti-
tution, provided that such participation is preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating
Committees in regard to the fundamental points, and other matters referred to in
the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy
will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a
position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken
without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States'
Negotiating Committee or such other sub-committees as the Standing Committee
may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they
affect the States; (b) with Interim Government and the competent British Indian authorities in regard to matters referred to in Paragraph 4 of the Cabinet Mission's
memorandum of May 12, 1946, on the States' treaties and paramcuntcy, provided
that (1) these negotiations will be conducted in accordance with the resolution adopted
by the General Conference of Rulers on January 29, 1947, and the instructions and

resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committees
and ratification by the States.
7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settle-
ment by His Majesty's Government of questions relating to individual States prior
to the transfer of power.
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Confidential
CONSTITUENT ASSEMBLY OF INDIA
REPORT OF THE UNION POWERS COMMITTEE TO THE
CONSTITUENT ASSEMBLY
the
We, the undersigned, members of the Committee appointed by
resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.
2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following:-
A-" Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times
of war as may be conducive to its successful prosecution and to effective demobilisa-
tion after its termination. In particular, "Defence" includes-
(1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, organisation and control of the existing armed forces raised and em-

ployed in Indian States;
(2) Defence industries;
(3) Naval, Military and Air Force works;
(4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;
(5) Arms, fire arms, ammunition and explosives;
(6) Atomic energy, and mineral resources essential to its production.
We recommend further that in order to enable the Union Government effectively
to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.
B-" Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :-
(1) Diplomatic, consular and trade representation;
(2) United Nations Organisation;
(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;
(4) War and Peace;
(5) The entering into and implementing of treaties and agreements with. other countries;
(6) Trade and Commeroe with foreign countries;
(7) Foreign loans;
(8) Naturalisation and aliens ;
(9) Extradition ;
(10) Passports and visas ;
(11) Foreign jurisdiction ;
(12) Admiralty jurisdiction;
75

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(13) Piracies, felonies committed on the high seas and offences committed in the air against the law of nations;
(14) Admission into, and emigration and expulsion from, the Union;

(15) Port quarantine;
(16) Import and export across customs frontiers as defined by the Union Government ;
(17) Fishing and fisheries beyond territorial waters.
C-The term "Communications" although it is wide enough to cover any connection between places should for the present purposes of the Union, in our opinion, include the following:-
(1) Airways;
(2) Highways and waterways declared by the Union to be Union highways: and waterways;
(3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers, and goods. on such waterways;
(4) (a) Posts and Telegraphs:
Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned,- subject however to the power of the Union to make laws for the regulation and control of the same.
(b) Union telephones, wireless, broadcasting and other like forms of commu nication; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication;
(5) Union railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regula tion of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers;
(6) Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiotion;
(7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein;
(8) Aircraft and air navigation; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes;
(9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;
(10) Carriage of passengers and goods by sea or by air;
(11) Union Meteorological Services ;

(12) Inter-Unit quarantine.
D-The expression "the powers necessary to raise the finances required" for the Union subjects in the Cabinet Delegation's Statement necessarily includes the
power to raise finances by taxation and loans. In existing oircumstances, recommend the following sources of revenue for the Union :-
(1) Duties of customs, including export duties;
(2) Excise duties;
(3) Corporation tax;
(4) Taxes on income other than agricultural income;
-
We
(5) Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies;

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(6) Duties in respect of succession to property other than agricultural land
(7) Estate duty in respect of property other than agricultural land;
(8) Fees in respect of any of the matters in the list of Union powers, but not including fees taken in any Court, other than the Union Court.
We realise that, in the matter of industrial development, the States are in varying
degrees of advancement and conditions in British India and the States are in many
respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may
not be possible to impose a uniform standard of taxation throughout the Union all
at once. We re ommend that uniformity of taxation througl out the Units may, for an agreed period of years after the establishment of the Union not exceeding 15,
be kept in abeyance and the incidences, levy, realisation and apportionment of the
above taxes in the State Units shall be subject to agreements between them and

the
Union Government. Provision should accordingly be made in the Constitution for
implementing the above recommendation.
This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.
3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Un on. We think that in any case the following powers
come within the category:-
(1) Union judiciary;
(2) Acquisition of property for the purposes of the Union;
(3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies;
(4) Census;
(5) Offences against laws with respect to any of the matters in the list of Union powers;
(6) Enquiries, surveys and statistics for the purposes of the Union ;
(7) Union Services;
(8) Industrial disputes concerning Union employees;
(9) Reserve Bank of India;
(10) Property of the Union and the revenue therefrom;
(11) Public debt of the Union;
(12) Currency, coinage and legal tender;
(13) All subjects in respect of Union areas;
(14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.
4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the Union of the laws and public acts and records of
the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has
already been made in the list of Fundamental Rights
5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope
that the following subjects will also be included in the Union List by agreement:-

(1) Insurance;
(2) Company Laws;
(3) Banking;
(4) Negotiable Instruments;

(5) Patents; trade marks, trade designs; copyright;
(6) Planning;
(7) Ancient and Historical Monuments;
(8) Standard Weights and Measures.
Such an arrangement will ensure uniformity, throughout the territories of the Union, in matters bearing on trade and commerce as has in fact been recognised in
many federal constitutions. We have included Planning in the above list for the reason that although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a co-ordinating machinery to assist them.
6. We recommend the insertion in the constitution of a provision on the lines of Article (xxxvii) of Section 5i of the Australian Constitution Act.
7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.
(Sd.) JAWAHARLAL NEHRU
GOVIND BALLABH PANT
B. L. MITTER
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JAIRAMDAS DAULATRAM
N. GOPALASWAMI AYYANGAR
K. M. MUNSHI
NEW DELHI;
17th April, 1947.
GIPD-NS-17CA-26-4-47 -1,000.
V. T. KRISHNAMACHARI

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B. PATTABHI SITARAMAYYA
BISWANATH DAS
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A. KRISHNASWAMI AYYAR
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Page - 81
SNO.1653
CONSTITUENT ASSEMBLY OF INDIA
CA 40/ Asy/46.
Dear Sir/Madam,
Council House,
3rd
75
(79
New Delhi, the 8th April, 1947
During their last session, the Constituent Assembly passed a resolution adjourning their meeting to some date in April to be fixed by the President. I am desired to inform you that the President has fixed the next meeting for Monday, the 28th April at 11 A.M. in the Constitution Hall, Council House, New Delhi.
Yours truly,
Hagan
(H. V. R.IENGAR)
Secretary.
The Hon'ble Shri Purushottam Das Tandon,

Page - 82
N.
SNO. 1654
No. CA/75/Cons-47.
CONSTITUENT ASSEMBLY.
Council House,
New Delhi, the 14th June, 1947.

I forward herewith a copy of the following papers for your information:-
To
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1. Statement by the British Government dated June 3, 1947.
2. Reforms Secretariat Notification No. F.50/47-R, dated 10.6.47, containing the Announcement by the Governor-General about the procedure to be followed for the purpose of giving effect to paras 5 and 8 of the above Statement.
APamanatsko
(K.V.Padmanabhan)
Under Secretary.
All members of the Constituent Assembly.

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HOW PUBLISHED BY AUTHORITY
NEW DELHI, TUESDAY, JUNE 10, 1947
JackShow Eamage DS
GOVERNMENT OF INDIA
SECRETARIAT OF THE GOVERNOR-GENERAL
(REFORMS)
New Delhi, the 10th June 1947
No. F. 50/47-R.-The following Announcement by the Governor General is published for general information.
ANNOUNCEMENT BY THE GOVERNOR-GENERAL
In pursuance of paragraph 21 of the Statement by His

Majesty's Government dated the 3rd June 1947, His Excellency the Governor General is pleased to direct that the following procedure shall be followed for the purpose of giving effect to paragraphs 5 to 8 of the Statement:-

(1) The members of the Bengal Legislative Assembly representing for the time being the constituencies specified in Schedules I and II, and the members of the Punjab Legislative Assembly representing for the time being the constituencies specified in Schedules III and IV, shall form the two parts of the Bengal Legislative Assembly and the Punjab Legislative Assembly, respectively, for the purpose of taking the decisions referred to in paragraphs 6 and 8 of the Statement.

(2) The Governor of Bengal shall summon the members forming each such part of the Bengal Legislative Assembly, and the Governor of the Punjab shall summon the members forming each such part of the Punjab Legislative Assembly, to meet on such date, at such time and in such place as he may think fit, for the purpose of taking their decision or decisions in accordance with paragraphs 6, 7 and 8 of the Statement.

(3) The Governor shall appoint one of the members of each such body to preside over its meetings, and also one of the members of either body to preside over the meeting referred to in paragraph 7 of the Statement in the event of such a meeting being held. Every such person shall have a right to vote on any issue before the meeting presided over by him, but shall not have or exercise a casting vote.

(4) Each such body shall have power to act notwithstanding any vacancy in the membership thereof.

(5) The President of each such body shall, at the commencement of its meeting, ascertain if any member demands that the joint meeting referred to in paragraph 7 of the Statement should be held, and shall forthwith communicate the result to the President of the other body. Should there be such a demand from any member, the joint meeting shall be held forthwith at such place as may have been appointed in this behalf by the Governor.

Immediately on the conclusion of such joint meeting, the two bodies shall reassemble separately for the purpose of taking their decisions referred to in paragraphs 6 and 8 of the Statement. thufound IT
bos Tradivo odd pack
(6) Subject to the provisions of paragraphs (3), (4) and. (5), each such body shall determine its own procedure.
SCHEDULE I
Description of Constituency.
Number of Members.
General Urban
Calcutta North
Calcutta East
1
1
1
Calcutta West
Calcutta Central
Calcutta South Central
Calcutta South
1
果汁丛
mom 1
1
1
12)
1
(eatro load
Hooghly cum Howrah Municipal
Burdwan Division North Municipal
24-Parganas Municipal
General Rural
Burdwan Central
Burdwan North-West
Birbhum
11 ausa mod
Bankura West
Bankura East
Midnapore Central

Jhargram cum Ghatal
Midnapore East
Midnapore South-West
Midnapore South-East
222 22
2 atmo
2
1 8
1
letter 1
groth
1
2
Hooghly North-Eastmoboadman) 2
Hooghly South-West
Howrah
24-Parganas South-East foodAge 2015
24-Parganas North-West
Khulna
Jalpaiguri cum Siliguri
Darjeeling
Calcutta North
Calcutta South
Muhammadan Urban
Hooghly cum Howrah Municipal
Barrackpore Municipal
24-Parganas Municipal
Burdwan
Muhammadan Rural
2
3
3
1
A
1
1
1
1
1

wangu) dan diok
Birbhum
(7) The President of each such body shall communicate its decision or decisions to the Governor.
Bankura
DARAME
(537)
1

Page - 84
28
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538
1
1
THE GAZETTE OF INDIA EXTRAORDINARY, JUNE 10, 1947
Description of Constituency
Midnapore
Hooghly
No. of Members
Description of Constituency
Karnal North
Ambala and Simla
No. of Member
Howrah
24-Parganas South
1
Kangra North
1
24-Parganas Central
1
24-Parganas North-East
1
Khulna
1
Satkhira
1
Bagerhat

Jalpaiguri cum Rapple
Dayaling
1
1
Kangra South
Kangra East
Kangra West
Hoshiarpur West
Una
Jullundur
ALudhiana and Ferozepur
Amritsar and Sialkot
42LLL12122
Women's General Urban
Calcutta (
1
1 (The Caste
Hindu Mem-
ber).
Women's Muhammadan Urban
Muhammadan Urban
Calcutta (Muhammadan)
1
Southern Towns
1
Anglo-Indian
South Eastern Towns
1
Eastern Towns
Anglo-Indian
401
401
1
Amritsar City
1
Indian Christian
Muhammadan Rural offe
Calcutta cum Presidency Division
aradaral Commerce & Industry. Na

Bengal National Chamber of Commerce 2
Indian Chamber of Commerce
Marwari Association
Muslim Chamber of Commerce
1
Hissar
1
to holdginee
Rohtak
1
2111
North West Gurgaon
1
South East Gurgaon
1
1
Karnal
1
Ambala and Simla
1
Landholders
Kangra & Eastern Hoshiarpur
Hoshiarpur West
1
Burdwan Landholders
1
Jullundur North
Labour
Jullundur South
1
Railway Trade Union
Ludhiana
1
1
Calcutta & Suburbs (Registered
1
Ferozepur Central
1
Factories).

Ferozepur East
Fazilka
1
1
Barrackpore (Registered Factories)
1
Amritsar
1
Howrah (Registered Factories)
1
Hooghly cum
Serampore (Registered 1
Tarn Taran
Ajnala
1
1
Factories).
Sikh Urban
Colliery (Coal Mines)
1
Eastern Towns
1
Tea Garden Labour (Darjeeling Sadar) 1
Sikh Rural
South East Punjab
1
University
Ambala North
1
SCHEDULE II
Calcutta University
All constituencies of the Bengal Legislative Assembly other than the following:-
1. All constituencies specified in Schedule I.
2. All European constituencies
3. The following Commerce and Industry constituencies, namely-
Bengal Chamber of Commerce,
Ludhiana East

Ludhiana Central
Jagraon
Ferozepur North
1
Kangra & Northern Hoshiarpur
1
Hoshiarpur South
1
Jullundur West ad
1
Jullundur East
1
1
1
1
1
1
Ferozepur East
Ferozepur West
Calcutta Trades Association,
Ferozepur South
1
Indian Jute Mills Association,
Amritsar North
Indian Tea Association,
Amritsar Central
Indian Mining Association. far
Amritsar South
1
1
1
SCHEDULE III
General Urban
Southern Towns
Amritsar
South Eastern Towns
1.
Eastern Towns
I

Amritsar City
1
East Punjab N Union
Central Punjab Landholders
Women's Constituencies
SIKH
Law kongr
1
1
1
General Rural
Hissar South
1
Hansi
1
Hissar North
1
Rohtak North
1
Rohtak Central
Jhajjar
1
1
North West Gurgaon
South East Gurgaon
Karnal South
1
2
1
Won timon Latour) I
East Punjab Landholders
SCHEDULE IV
All constituencies of the Punjab Legislative Assembly, other than the European Constituency and the constituencies specified in Schedule III, but including the representative of the Scheduled Castes from the Amritsar and Sialkot General Rural Constituency.
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V. P. MENON, Reforms Commr.

PRINTED BY THE MANAGER GOVERNMENT OF INDIA PRESS, NEW DELHI, INDIA
Labour

3rd June 1947.
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STATEMENT BY HIS MAJESTY'S GOVERNMENT.
INTRODUCTION.
1.
On February 20th, 1947, His Majesty's Government announced their intention of transferring power in British India to Indian hands by June 1948. His Majesty's Government had hoped that it would be possible for the major parties to co-operate in the working-out of the Cabinet Mission's Plan of May 16th, 1946, and evolve for India a Constitution acceptable to ali concerned. This hope has not been fulfilled.
2. The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives cf Bengal, the Punjab and Sind as also the representative of British Baluchistan, has decided not to participate in the Constituent Assembly.
3. It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the absence of such agreement, the task of devising a method by which the wishes of the Indian people can be ascertained has devolved upon His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention

of attempting to frame any ultimate Constitution for India; this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

THE ISSUES TO BE DECIDED.

4. It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a consequence of this announcement, the Muslim League representatives of those Provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issue whether their Constitution is to be framed: -

(a) in the existing Constituent Assembly; or

(b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly.

When this has been done, it will be possible to determine the authority or authorities to whom power should be transferred.

5.

BENGAL AND THE PUNJAB.

The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will, therefore, each be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the Province. For the purpose of determining the population of districts, the 1941 census figures will be taken as authoritative.

The Muslim majority districts in these two Provinces are set out in the Appendix to this Announcement.

6. The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decides in favour of partition, division will take place and arrangements will be made accordingly.

7. Before the question as to the partition is decided, it is desirable that the representatives of each part should know in advance which Constituent Assembly the Province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore, if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the Province as a whole would join if it were decided by the two parts to remain united.

8. In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf of the areas they represent, decide which of the alternatives in paragraph 4 above to adopt.

9. For the immediate purpose of deciding on the issue of partition, the members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim majority districts (as laid down in the Appendix) and non-Muslim majority districts. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these Provinces a detailed investigation of boundary questions will be needed; and, as soon as a decision involving partition has been taken for either Province, a Boundary Commission will be set up by the Governor-General, the membership and terms of reference of which will be settled in consultation with those concerned. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors, Similar instructions will be given to the Bengal Boundary Commission. Until the report of a Boundary Commission has been put into effect, the provisional

boundaries indicated in the Appendix will be used.

SIND

10. The Legislative Assembly of Sind (excluding the European members) will at a special meeting also take its own decision on the alternatives in paragraph 4 above.

11.

NORTH-WEST FRONTIER PROVINCE.

The position of the North-West Frontier Province is exceptional. Two of the three representatives of this

Ex

- 3 -

79

Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the existing Constituent Assembly, it will be necessary to give the North-West Frontier Province an opportunity to reconsider its position. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned in paragraph 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the Provincial Government.

BRITISH BALUCHISTAN.

12. British Baluchistan has elected a member, but he has not taken his seat in the existing Constituent Assembly. In view of its geographical situation, this Province will also be given an opportunity to reconsider its position and to choose which of the alternatives in paragraph 4 above to adopt. His Excellency the Governor-General is examining how this can most appropriately be done.

ASSAM.

13. Though Assam is predominantly a non-Muslim Province, the district of Sylhet which is contiguous to Bengal is predominantly Muslim. There has been a demand that,

in the event of the partition of Bengal, Sylhet should be amalgamated with the Muslim part of Bengal. Accordingly, if it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the Assam Provincial Government to decide whether the district of Sylhet should continue to form part of the Assam Province or should be amalgamated with the new Province of Eastern Bengal, if that Province agrees. If the referendum results in favour of amalgamation with Eastern Bengal, a Boundary Commission with terms of reference similar to those for the Punjab and Bengal will be set up to demarcate the Muslim majority areas of Sylhet district and contiguous Muslim majority areas of adjoining districts, which will then be transferred to Eastern Bengal. The rest of the Assam Province will in any case continue to participate in the proceedings of the existing Constituent Assembly.

REPRESENTATION IN CONSTITUENT ASSEMBLIES.

14. If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the scale of one for every million of population according to the principle contained in the Cabinet Mission's Plan of May 16th, 1946. Similar elections will also have to be held for Sylhet in the event of it being decided that this district should form part of East Bengal. The number of representatives to which each area would be entitled is as follows:-

Province.
General. Muslims. Sikhs. Total.
85
Sylhet District
1
2
Nil
3
۵۵
West Bengal
15
4

Nil
19
0 0
East Bengal
12
29
Nil
41
West Punjab
3
12
2
17
9
East Punjab
6
4
2
12
0

20
86
- 4 -
15. In accordance with the mandates given to them, the representatives of the various areas will either join the existing Constituent Assembly or form the new Constituent Assembly.
ADMINISTRATIVE MATTERS.
16. Negotiations will have to be initiated as soon as possible on the administrative consequences of any partition that may have been decided upon: -
(a) Between the representatives of the respective successor authorities about all subjects now dealt with by the Central Government, including Defence, Finance and Communications.
(b) Between different successor authorities and

His Majesty's Government for treaties in regard to matters arising out of the transfer of power.

(c) In the case of Provinces that may be partitioned, as to the administration of all provincial subjects such as the division of assets and liabilities, the police and other services, the High Courts, provincial institutions, etc.

THE TRIBES OF THE NORTH-WEST FRONTIER.

17. Agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority.

18.

THE STATES.

His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12th May 1946 remains unchanged.

NECESSITY FOR SPEED.

19. In order that the successor authorities may have time to prepare themselves to take over power, it is important that all the above processes should be completed as quickly as possible. To avoid delay, the different Provinces or parts of Provinces will proceed independently as far as practicable within the conditions of this Plan. The existing Constituent Assembly and the new Constituent Assembly (if formed) will proceed to frame Constitutions for their respective territories: they will of course be free to frame their own rules.

IMMEDIATE TRANSFER OF POWER.

20. The major political parties have repeatedly emphasized their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date of June, 1948, for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly, as the most expeditious, and indeed the only practicable way of meeting this desire, His Majesty's Government propose legislation during the current session for the printroduce

this year on a Dominion Status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether

or not the part of India in respect of which they have authority will remain within the British Commonwealth,

FURTHER ANNOUNCEMENTS BY GOVERNOR-GENERAL .

21. His Excellency the Governor-General will from time to time make such further announcements as may be necessary in regard to procedure or any other matters for carrying out the above arrangements.

APPENDIX.

The Muslim majority districts of Punjab and Bengal according to 1941 census.

1. The Punjab.

0027

Lahore Division. Gujranwala, Gurdaspur, Lahore, Sheikhupura, Sialkot.

Rawalpindi Division.- Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur.

Multan Division.- Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan, Muzaffargarh.

2. Bengal.

Chittagong Division.- Chittagong, Noakhali, Tippera.

Dacca Division.- Bakerganj, Dacca, Faridpur, Mymensingh.

Presidency Division.- Jessore, Murshidabad, Nadia.

Rajshahi Division.- Bogra, Dinapur, Malda, Pabna, Rajshahi, Rangpur.

3rd June 1947.

AVT/200 copies.

The Viceroy's House,
New Delhi.

From
To
SNO 1654
88
NO.CA/6/SER/47
CONSTITUENT ASSEMBLY OF INDIA
KHAN BAHADUR S.G. HASNAIN,
Council House,
New Delhi,
18th April, 1947.
Under Secretary.
ALL MEMBERS OF THE CONSTITUENT ASSEMBLY
SUBJECT: Ration Cards for Delhi.
Sir,
In order to minimise inconvenience to Members, I am directed to state that the following arrangements have been made with the Controller of Rationing, Delhi, for the issue of Food Ration Cards and Fuel Permits to Members attending the forthcoming session of the Constituent Assembly who want to make their own cooking and living arrangements and will not be staying in Constitution House or other Government hostel or private hotel: -

1. FOOD RATION CARDS :

(i) Members will be required to fill in and sign the application form (Form 'B' enclosed), in advance of their arrival in Delhi and return it to this Office for transmission to the Circle Rationing Officer.

(ii) Members should be careful to fill in all the required particulars in the form and give their full names and correct Delhi addresses.

(iii) The Circle Rationing Officer will arrange to get the Ration Cards prepared and send them to this Office for delivery to Members.

(iv) On arrival in Delhi Members will be required to call at this Office to take over, and sign for, the Ration Cards, or when this is not possible, to send a reliable person, with

a written authority, to do so on their behalf.
(v) Members are informed that it is permissible to bring one Week's ration of rationed commodities, viz., Rice, Atta and Sugar, with them, and they are advised to do so to avoid inconvenience on their arrival in Delhi.
(vi) Members, who will obtain their requirements of rationed articles from an authorized establishment, such as a catering institution, hotel, restaurant, etc., need not apply for ration cards for themselves, but they must do so for their servants accompanying them, who will have to make their own arrangements.
2. FUEL PERMITS:
(i) Members desiring to have fuel permits may kindly give their full names and Delhi addresses, and sign the enclosed application for fuel ration (other particulars will be filled in by the Rationing Authorities) and return it to this office for transmission to the Circle Rationing Officer who will arrange to get the fuel permits prepared and send them to thisoffice for delivery to Members.
(ii) Fuel will be available at the shops noted on the permits against payment. The following are the fuel shops in the neighbourhood of the residences for the Members:
7.

83
89
-2-
(i) M/S Moolchand Uday Ram,
F.R.D. 262. (Behind Western Court, New Delhi).
(ii) M/S.. Mahabir Coal Co.
F.R.D.252. (Bengali Mall Market, New Delhi).
Unless indicated otherwise, the Circle Rationing Officer will mark these permits on one of these shops. Should any Member desire to purchase his fuel from any other fuel dealer he may mention the name and the No. of the fuel dea and the permit will be marked on such a dealer.
(iii) The quota of fuel fixed for each member per month

is 7 maunds fire-wood, 1 maunds charcoal, 4 maunds soft coke and 1 maunds steam coal. This is the maximum quota available to each member, and they may take the whole or any part of it according to their requirements. It will not be possible to surrender one form of fuel and take another. If in a special case, larger quantities are required you may kindly forward an application which will be transmitted to the Circle Rationing Officer. In the application reasons for which large quantities are required should be shown.

(iv) Permits for fuel will not be issued to Members residing in hotels, and their servants shall make their own arrangements to get fuel from the nearest fuel dealer on production of their Ration Cards, in the ordinary way.

3. At present, arrangements have been made for the ration cards to be valid up to the 157th week of rationing ending on the midnight following the 1st June 1947. If any Member is required to stay beyond 1st June 1947, he may kindly inform this office for making necessary arrangements to get such Ration Cards from the Circle Rationing Officer. It is requested that such intimation should be sent as early as it becomes clear to the Member that he proposes to stay beyond the 1st June 1947.

4. Ration Cards and fuel Permits must be returned to this office by the Members before they leave Delhi.

5. Should any Member require any further assistance. in this matter of procuring rationed commodities, he may either write to this office or ring up the Deputy Controller of Rationing on telephone No.6685. The telephone No. of the Circle Rationing Officer No.15 is 7196.

I have the honour to be,

Sir,

Your most obedient servant,

Hasnam

(S.G. HASNAIN)

UNDER SECRETARY

HVR/500 copies

18-4-47.

SNO.1655
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CONSTITUENT ASSEMBLY OF INDIA.
87
Meetings of Committees* to be held during the month of April.

Date	Name of the Committee	Time & place
1	1	I
2-4-47	Staff and Finance Committee	I
7-4-47		
14-4-47		
15-4-47		
16-4-47)		
-do-	Joint Sub-Committee of the States' Negotiating Committees.	
	Fundamental Rights Sub-Committee	9.30 A.M. Room No.28, Council House.
	Union Powers Committee	Room No.28, Council House. (Time to be fixed)
		10.30 A.M. Room No.63, Council House.
		To be fixed.
17-4-47	Minorities Sub-Committee	

18-4-47
Order of Business Committee
(subject to
confirmation)
21-4-47
Advisory Committee
22-4-47 or
Steering Committee
23-4-47 (subject
to confirmation)
10 A.M.
Room No.63,
Council House.
To be fixed
10 A.M.
Room No.63,
Council House.
To be fixed
* other than the Excluded Areas Sub-Committee and the Assam Excluded Areas & North-East Frontier Tribal Sub-Committee which are on tour.
Council House,
New Delhi,
29-3-1947.
A/29.3.47/160.
H.V.R.IENGAR
SECRETARY.

Page - 93
From
To
SNO.1656
No. CA/10/Ser/47.
CONSTITUENT ASSEMBLY OF INDIA.
Council House
New. Delhi, the 1st April, 1947.
H.V.R. Iengar, Esq., C.I.E., I.C.S.,
Secretary.

All Members of the Constituent Assembly of India.
Subject: Travel and other facilities for
members of the Constituent Assembly.
Sir/Madam,
As was arranged during the previous sessions of the Constituent Assembly, Messrs. Govan Brothers will act, in respect of the ensuing session commencing on 28.4.47, as our travel agents for the purchase of tickets, reservation of accommodation in trains and air services, etc.
2.
They will also, if desired, receive members at the Railway Station or Air Ports at Delhi and provide transport from the station to the place of residence and vice versa; arrange sight-seeing trips and provide transport for other purposes in Delhi.
For performing the duties mentioned above in Delhi, they will station a trained man a few days before the Assembly session starts, and till a few days after the session adjourns, at Constitution House (where the bulk of the members are expected to stay) in order to be in direct touch with the members and the management of Constitution House.
They will not make any extra charges for these services. Members will only have to pay the actual cost of the transport provided.
3. Members who desire to avail themselves of the facilities mentioned above are advised to contact in good time the Head Office of Messrs. Govan Brothers, Ltd.
branch offices at the addresses given below, so that arrange- or any of their
ments for their travel, reception, etc., may be made well in advance:-
NEW DELHI ... Messrs. Govan Bros., Ltd., Passage Deptt., Head Office, Scindia House, Connaught
Circus.
MADRAS
BOMBAY
CALCUTTA
Telegrams: 'GOVBRO'. Telephone: 7682.

Messrs. Govan Bros. Ltd., Passage Deptt.,
Bharat Buildings, Mount Road.
Telegrams: 'GOBROS'. Telephone: 3745.
The American Express Company, Inc., Travel
Deptt., "Navsari Building", (I Floor), 240,
Hornby Road, Post Box No. 507.
Telegrams:
AMEXCO". Telephone: 25295.
Travel
The American Express Company, Inc.,
Deptt., P.O.Box No. 2311, "Pollock House",
28, Pollock Street.
Telegrams: "AMEXCO". Telephone: 2096.
p.t.o.

4.
KARACHI
LAHORE
92
-2-
The American Express Co., Inc., Travel Deptt.,
P.O.Box No. 533, "Oriental Building", McLeod
Road.
Telegrams: "AMEXCO". Telephone: 3461.
Messrs. Govan Bros., Ltd., 3, Sir Ganga Ram
Trust Building, The Mall.
Telegrams: "GEOFMANCO". Telephone: 2988.
The Railway Department (Railway Board) have suggested that it would facilitate the work of the various Railway Administrations if the authorities concerned are given advance notice for the reservation of accommodation on railways, and that if any difficulty is experienced in securing accommodation, the matter should at once be reported to the General Manager of the Railway concerned in the first instance, instead of through the office of the Constituent Assembly or the Railway Board. This will eliminate delay and permit prompt action being taken to remedy defects.

5. The Railway Administrations have been asked by the Railway Board to extend in your favour the period in advance of the actual date of travel within which tickets may be purchased to 30 days, so as to enable you to secure early reservation.

I have the honour to be,
Sir/Madam,
Your most obedient servant,
G/1/4/47-450 copies.
(H.V.R. IENGAR)
Secretary.

Page - 95

SNO.1657

CONSTITUENT ASSEMBLY OF INDIA.

ORDERS OF THE DAY

for the meeting of the Constituent Assembly to be held on Thursday, the 1st May, 1947, at 9 a.m.

1.

PRESENTATION OF CREDENTIALS

93

Members who have not already presented their credentials and signed the Roll of Members may do so.

2.

FURTHER CONSIDERATION of the Interim Report of the Advisory Committee on the subject of Fundamental Rights.

3.

CONSIDERATION of any business entered in the Orders of the Day for Wednesday, the 30th April, 1947, and not concluded on that day.

New Delhi,
April 29, 1947.
*AW
29-4-47 • 850*
H.V.R. IENGAR
SECRETARY.

Page - 96

e meetin
ssembly to be held on Monday,
ach April, 1947, at 11 a.m.
gg
PRESENTATION OF CREDENTIALS
Members who have not already presented their credentials and signed the Roll of Members may do so.
94
2.
MOTIONS
SNO 1658
*
Copy of
Report
attached.
(1) THE HONOURABLE PANDIT JAWAHARLAL NEHRU to move the following Motion:-
**
The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.
The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.
(2) SHRIMATI G. DURGABAI to move the following Motion:-
Resolved that this Assembly do proceed to elect, under sub-rule (2) of rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.
New Delhi,
April 24, 1947.
H.V.R.IENGAR
SECRETARY

SNO.1659
At as

95
No. CA/31/47-Cons.
CONSTITUENT ASSEMBLY OF INDIA.
Council House,
New Delhi, the 13th July, 1947.
SUBJECT: - PROCEDURE FOR THE ELECTION OF
TWO VICE-PRESIDENTS.
Dear Sir,
I forward herewith for the use and guidance of the members
a copy of the procedure prescribed by the Hon'ble the President
for the election of two Vice-Presidents of the Assembly.
H.
To
All Members of the Constituent Assembly.
Yours truly,
(K.V.PADMANABHAN
UNDER SECRET RY

Page - 98
92
96
Procedure for election of two Vice-Presidents
of the Constituent Assembly.
1.
At any time before 5 p.m. on the day preceding
the date fixed by the President for the election of the two
Vice-Presidents, any member may nominate not more than two
members for election by delivering to the Secretary the
nomination papers signed by himself as proposer and by a
third member as seconder, and stating in each case -
(a) the name of the member nominated, and
(b) that the proposer has ascertained that such member
is willing to serve as Vice-President if elected.
Any member who has been nominated may withdraw his
candidature at any time before the Assembly proceeds to hold
2.
the election.
3.

On the date fixed for an election, the President shall read out to the Assembly the names of the members who have been duly nominated and have not withdrawn their candidature together with their proposers and seconders, and, if there are only two such members, shall declare them to be duly elected. If there are more than two such members, the election of the Vice-Presidents shall be held by ballot.

Explanation.- For the purpose of ballet, every member shall have two votes, but not more than one vote shall be given to any one candidate.

4.

For the purposes of paragraph 3 a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not, before the reading out of the names by the President, signed the Roll of Mombers.

5.

Where there are more than two candidates for election, the two candidates to whom the largest number of valid votes. has been given shall be declared elected.

6.

Where at the ballot two or more candidates obtain an equal number of votes and one or more of the candidates has to be excluded from the election, the determination as between the candidates whose votes are equal of the candidate or candidates who are to be excluded shall be by drawing of lots.

H.

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To

SIR,

SNO 1660

CONSTITUENT ASSEMBLY

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ALL MEMBERS OF THE CONSTITUENT ASSEMBLY w tadmar
fiw oz ob vara bah
aldet
New Delhi, the 10th July 1947
rsa o ai ded)
SUBJECT-procedure regarding Divisions in the Constituent Assembly
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I am directed to state for your information and guidance that the following revised procedure has been laid down by the President for taking divisions in the
Constituent Assembly. mio for livraretov to an old roll offt to nolt
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I. On the conclusion of a debate, the question before the House should be put from the Chair. Those in favour of the motion shall be invited to say 'Aye'. and those against it 'No', and the Chairman shall say 'I think the Ayes (or the Noes) have it'. If this statement of the person presiding goes unchallenged, he shall then say twice 'The Ayes (or the Noes) have it'; and the question before the House shall be determined accordingly.
II. But if the minority desire a division, they shall challenge the opinion by exclaiming 'The Noes (or the Ayes) have it', whereupon the person presiding, if satisfied that the division is justifiably claimed, shall order a division to be held by uttering the word 'Division'. Upon this order, the Secretary shall cause electric bells to ring in the Notice Office, and in other appropriate rooms and passages in
the Council House in order to summon absent members to the Constitution Hall. Immediately after the bells stop ringing, all the outer doors of the Members' Lobby
shall be closed, and the Watch and Ward Staff posted at each door with instructions
to prevent any entry or exit through these doors until the division is concluded. Then the person presiding shall read the terms of the motion before the House and
put the question for a second time. If a division is still demanded he shall say 'Ayes to the Right. Noes to the Left.'

III. According as they wish to vote, Members shall then proceed to the 'Ayes' or 'Noes' lobby, and there pass in single file before the Telling Clerk. On reaching the desk of the Telling Clerk each Member in turn shall call out the division number
which is allotted to him for this purpose and which he is requested to commit to memory at the commencement of each session. The Telling Clerk shall then mark
off this number on the division list, simultaneously calling out name of the Member.
In order to ensure that his vote has been properly recorded, the Member should not move off until he has clearly heard the Telling Clerk thus call out his name.
IV. When the voting process as described above is completed in the division lobbies the Telling Clerks shall present their division lists to the Secretary who shall
count the votes recorded thereon, and present the totals of 'Ayes' and 'Noes' to the person presiding, who shall announce the result to the House. The division is not at an end until the result is so announced. If the numbers of 'Ayes' and 'Noes' are equal the question shall be decided by the casting vote of the person presiding.
V. (a) A member who is unable to go to the division lobby owing to illness may, with the permission of the Chair, have his vote recorded either at his seat in the Assembly Chamber or in the Members' Lobby.
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(b) If a member finds that he has voted by mistake in the wrong lobby, he shall be allowed to correct his mistake, provided he brings it to the notice of the Chair before the result of the division is announced.
(c) When the Telling Clerks have brought the division lists to the Secretary's table a member who has not till that time recorded his vote but who then wishes to
have his vote recorded may do so with the permission of the Chair.
VI. If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear pre-

ponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for 'Aye' and for 'No' respectively to rise in their places, and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman, there and then declares the determina-
tion of the House, the names of voters will not ordinarily be recorded. and
I have the honour to be,
SIR,
Your obedient servant,
vd non add or callsh Judit,no-ivit a misal H. V. R. IENGAR,
sill noquosade ved (Secretary, Constituent Assembly
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Page - 101
SNO.1661
CONSTITUENT ASSEMBLY.
I 99
April
Circular No. CA /2/N.0/40/6 the fan., 1947.
New Delhi, the
To The Hon'ble Stori Purushotam Das
13, F. Rd.,
Puri

December 1946.
Tandon
SUBJECT.-Division number
SIR,
I am directed to inform you that for the purpose
of divisions in the Constituent Assembly the number
This number may
allotted to you is
107
kindly be committed to memory and given to the
Teller in the Division Lobby.
I have the honour to be,
SIR,
Your obedient servant,
H. V. R. IENGAR,
Secretary, Constituent Assembly.

Page - 102
SNO 1662
No.CA/11/Ser/47
CONSTITUENT ASSEMBLY OF INDIA
From:
Khan Bahadur S.G.Hasnain,
UNDER SECRETARY.
To
100
Council House,
New Delhi, the
April, 1947.
All Members of the Constituent Assembly.
SUB: MEDICAL FACILITIES FOR MEMBERS OF THE
CONSTITUENT ASSEMBLY.
con
Dear Sir/Madam,
It has been arranged that with effect from the morning of
the 26th April, 1947, the Medical Officer-in-Charge of the North
Block Secretariat Dispensary, will be available at Constitution
House (suite No.77) at 09.00 every morning and at 5 o'clock in

the evening for one hour each time to attend to minor ailments of Members of the Constituent Assembly.
ASW/350 copies.
Yours faithfully,
Masnain
(S.G.Hasnain)
UNDER SECRETARY.

Page - 103
5-4-47.
Copies.
From:
To
:
CA/36/Asy/47.
CONSTITUENT ASSEMBLY OF INDIA
101
95
Council House,
New Delhi, the
K.V.Padmanabhan Esq., M.A., LL.B.,
Assistant Secretary.
All Members of the Constituent Assembly of India.
SUB: REVISED HANDBOOK FOR MEMBERS OF THE CONSTITUENT ASSEMBLY.
Sir/Madam,
I am directed to forward herewith a copy of the revised 'Hand Book' prepared in this office for the use and guidance of Members of the Constituent Assembly of India.
I have the honour to be,
Sir/Madam,
Your most obedient servant,
Mufadmanabhan
(K.V.PADMANABHAN.)
ASSISTANT SECRETARY.

Page - 104

SANO 1663
(102)
96
ADDENDUM
In the "CONSTITUTIONAL PRECEDENTS (First Series)" please substitute the following for the paragraph at the foot of page 1 and the top of page 2 of the Pamphlet on Union Subjects (I)'.
6
"To what extent can foreign trade and commerce be said to be comprised in "foreign affairs"? English practice, in this respect, which we may note for our guidance, is as follows:
The general relations of the United Kingdom with foreign countries, in which economic questions play an important part, are a special responsibility of the Foreign Office; the trading interest of the United Kingdom is a special responsibility of the Board of Trade; the financial position of the United Kingdom in relation to foreign countries is a special responsibility of the Treasury. Ultimate responsibility for any matter of major policy is that of His Majesty's Ministers collectively. This is particularly relevent in questions which involve two or more Departments of Government.
The formation of commercial policy towards foreign countries and the conduct of trade negotiations with other Governments are thus primarily the responsibility of the Board of Trade (Commercial Relations and Treaties Department). In addition to sections dealing with general matters, this Department has a number of officers who devote their time to particular countries or groups of countries. They keep in close touch with the relevant geographical and economic departments of the Foreign Office in order to ensure that commercial policy is in line with general foreign policy and also with the Treasury who have an Overseas Finance Department which, like the Commercial Relations and Treaties Department, contains geographical sections with respect to financial questions.
The Foreign Office contains both geographical and general economic departments which are organised to handle economic questions, according to whether they are susceptible of being dealt with on a purely geographical basis or are of a more general character. The Foreign Office departments concerned always consult with the Commerical Relations and Treaties Department of the Board of Trade on matters of commercial concern, and the Overseas Finance Department of the Treasury where

financial questions are involved.
There are also a number of other Departments (for instance, Food, Civil Aviation, and Fuel and Power) which are associated in their respective spheres with the three Departments principally concerned in the formation of economic policy towards foreign countries.
Thus, there exists, for each country or group of countries a team of officers in the Foreign Office, Board of Trade and Treasury (and also in other Departments as necessary) who are expert in the general, commercial and financial aspects respectively of our relations with foreign countries. The members of this team work closely together and are in constant touch with each other by correspondence, telephone and meetings. These three Departments thus all play their part in framing policy and make their contribution with respect to their particular sphere of operation.

Mention must also be made of the work of the Export Promotion Department of the Board of Trade. This has taken the place of the Department of Overseas Trade, which was jointly responsible to the Foreign Office and the Board of Trade. As its name indicates, the emphasis of the work of this Department is primarily on the urgent need to expand U. K. exports. Consequently the Export Promotion Department is mainly in contact with the individual traders at home or overseas who are engaged in the actual work of export, rather than with other Government Departments. But in addition to these activities it is also responsible for providing the policy-making Departments with the economic, commercial and in many cases financial data on which policy decisions can be based.
Economic work in foreign countries is conducted through the Commercial Secretariats of United Kingdom Missions abroad, who are responsible to the Foreign Office and are members of the Foreign Service. These officers are the chief sources of intelligence on economic developments in foreign countries and they serve for this purpose the Export Promoting Department of the Board of Trade. At the same time these Commercial Secretariats are responsible for handling trade questions as defined in paragraph 2 with the Governments to which they are accredited, under

instructions from the Commercial Relations and Treaties Department of the Board of Trade.
The allocation of responsibility for commercial relations with Canada, Australia, New Zealand, South Africa and Eire follows a similar pattern with the difference that the Dominions Office and not the Foreign Office is generally responsible for relations with those countries. The Trade Commissioners stationed in the British Commonwealth, unlike the commercial secretariats in Foreign countries, are primarily responsible to the Board of Trade. But in the countries mentioned the Senior Trade Commissioner is in each case also the Economic Advisor to the United Kingdom High Commissioner (or Representative) and thus keeps in touch through the latter with the Dominions Office."
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Page - 106
SNO. 1664
s. Kayab Husain
S.
CTITUENT ASSEMBLY OF INDIA
ORDERS OF THE DAY
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for the meeting of the Constituent Assembly to
be held on Monday, the 14th July, 1947, at 10 a.m.
1.
PRESENTATION OF CREDENTIALS
Members who have not already presented their credentials and signed the Roll of Members may do so.
2.
MOTIONS
(1) SHRI K.M. MUNSHI to move the following Motion:-
Resolved that the Constituent Assembly do proceed to take into consideration the further Report of the Order of Business Committee appointed by the resolution of the Assembly of the 25th January, 1947.
(2) SHRI K.M. MUNSHI to move
That the following amendments to the Constituent Assembly

Rules be taken into consideration:-
Rule 2.-
In clause (b), delete the words "Sections or".
Delete clause (f).
Rule 3.- Delete the words "or any Section thereof".
Rule 5.- In sub-rule (2), delete the words "or the appropriate authority in British Baluchistan".
For sub-rule (6) substitute the following:-
"(6) As soon as may be after the receipt of the request mentioned in sub-rule (2), the Speaker of the Provincial Legislative Assembly concerned -
(a) shall appoint by suitable notification a person to be the Returning Officer for the

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-2-
election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election, and
(b) shall also appoint by suitable notification -
(i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;
(ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations;
(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
(iv) a further date, not later than twentyone days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken."
After sub-rule (6), insert the following new sub-rule:-
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'(6)a. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall

commence and the hour at which it shall close
on the date fixed under sub-clause (iv) of clause (b)
of sub-rule (6) and the place at which the poll shall
be taken."
Add the following at the end of sub-rule (9):-.
"Where any such rules or regulations exist, it shall
be competent for the Speaker of the Provincial Legislative

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Assembly concerned to make, with the previous approval
of the President, such modifications therein as may be
necessary for the purposes of this sub-rule".
Rule 10. Delete the whole of the rule.
Rule 11. For the words "five Vice-Presidents", substitute
"two Vice-Presidents"; and insert the following at the end
of this rule:-
"who shall be elected by the Assembly from among its
members in such manner as the President may prescribe."
Rule 12. Delete the whole of the rule.
Rule 13.-
For the words "rule 12(1)", substitute "rule 11".
Rule 14.- In sub-rule (2), for the words "an elected"
substitute "a".
In sub-rule (2), delete the words "as a whole".
Rule 17.- Delete sub-rule (6).
Secretary".
In sub-rule (8), delete the words "or a Joint
Rule 18. In clause (c), delete the words "Sections and the
Rule 19.- Delete clause (iii) of sub-rule (1).
Sections".
In sub-rule (1)(ix), delete the words "or the
Rule 23. After Rule 23, insert the following new rule:-

"23-A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its Committees.
(2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the Committee, as the case

may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the Committee, as the case may be, till the next day on which it ordinarily sits."
Rule 31. Delete sub-rule (3).
Rule 35.- Delete both the provisos.
Rule 36. Delete -
-
(i) the word "exclusive";
(ii) the words "Union Constituent" wherever they occur; and
(iii) the words "shall be binding on the Sections and".
Rule 41. In sub-rule (1)(c), delete the words "between the Assembly and the Sections, between the Sections inter se".
Rule 42. In sub-rule (1)(b), for the word "five", substitute the word "two".
Rule 45. In sub-rule (2), delete the words "one representing each Governor's Province".
Rule 46. In sub-rule (1), delete the words "or a Section according as the business of the committee relates to the Assembly or the Section".
Rule 47. Delete the words beginning with "and the Secretary of any Section etc." to the end of the rule.
Rule 49. Delete the words "or to the Section concerned, as the case may be,".
Rule 63. Delete the whole of the rule,
Rule 67. Delete the words "the Sections and" in the first

sentence; and delete the whole of the second sentence.

Page - 110
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(3)
SHRI SATYANARAYAN SINHA move the following Motion:-
Resolved that this Assembly do proceed to elect two Vice-Presidents in accordance with the provisions contained in the Constituent Assembly Rules.
(4) SHRI SATYANARAYAN SINHA to move the following Motion:-
Resolved that this Assembly do proceed to elect, in the manner required under rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee.
(5) SHRI SATYANARAYAN SINHA to move the following Motion:-
Resolved that this Assembly do proceed to elect, in the manner required under rule 44(3) of the Castituent Assembly Rules, three members to be members of the Credentials Commitee.
(6) SHRI SATYANARAYAN SINHA to move the following Motion:-
Resolved that this Assembly do proceed to elect, in the manner require under rule 45(2) of the Constituent Assembly Rules, three members to be members of the House Committee.
(7) SERI SATYANARAYAN SINHA to move the following Motion:-
Resolved that this Assembly do proceed to elect, in the manner required under rule 40(2) & (5) of the Constituent Assembly Rules, nine members to members of the Steering Committee.
New Delhi,
July 10, 1947.
H.V.R.IENGAR
SECRETARY

Page - 111
H.
CONSTITUENT ASSEMBLY OF INDIA.
ORDERS OF THE DAY
for the meeting of the Constituent Assembly to be
held on Tuesday, the 15th July, 1947, at 10 a.m.
PRESENTATION OF CREDENTIALS
103
1.
Members who have not already presented their credentials and
signed the Roll of Members may do so.
2.
MOTION
3.
SARDAR VALLABH BHAI PATEL to move the following Motion: -
Resolved that the Constituent Assembly do proceed to
take into consideration the Report on the principles of a
model Provincial Constitution submitted by the Committee
appointed in pursuance of the resolution of the Assembly of
the 30th April, 1947.
Consideration of any business entered in the Orders of the
Day for Monday, the 14th July, 1947, and not concluded on that day.
New Delhi,
July 12, 1947.
H.V.R.IENGAR
SECRETARY.

Page - 112
No. CA/64/Cons./47.
CONSTITUENT ASSEMBLY OF INDIA
110
Council House,
+04
New Delhi, the 27th June, 1947.
I forward herewith the Report of the Provincial
Constitution Committee which will come up for consideration
by the Constituent Assembly at its forthcoming session
commencing on the 14th July, 1947. The report is provisional.

Any changes that the Committee may want to make will be communicated to members of the Assembly as soon as possible.
The Report of the Union Constitution Committee will follow.
To
N.
H.V.R.Iengar
Secretary.
All members of the Constituent Assembly.

Page - 113
H.
From
To
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105
CONFIDENTIAL.
No. CA.64/Cons/47.
CONSTITUENT ASSEMBLY OF INDIA.
Council House
New Delhi, the 27th June, 1947.
The Hon'ble Sardar VALLABHBHAI PATEL,
Chairman, Provincial Constitution Committee.
The PRESIDENT,
Constituent Assembly of India.
Sir,
On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April 1947 to report on the principles of a model Provincial Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.
I have the honour to be,
Sir,
Your most obedient servant,
VALLABHBHAI PATEL
CHAIRMAN.

Governor.
CONSTITUENT ASSEMBLY OF INDIA.
112
106
CONFIDENTIAL.
PROVINCIAL CONSTITUTION COMMITTEE.
Memorandum on the Principles of a
model Provincial Constitution.
Part I.
GOVERNORS' PROVINCES.
Chapter I.
The Provincial Executive.
1.
For each Province there shall be a Governor
to be elected directly by the people on the basis
of adult suffrage.
Note. The Committee were of the opinion
that the election of the Governor should, as far as
possible, synchronize with the general election to
the Provincial Legislative Assembly. This may be
difficult to provide by statute, because the
Legislative Assembly may be dissolved in the middle
of its term.]
(1) The Governor shall hold office for a term
of four years, except in the event of death, resigna-
tion or removal.
Term of Office.
2.
(2) The Governor may be removed from office for
stated misbehaviour by impeachment, the charge to be
Preferred by the Provincial Legislature, or where
the Legislature is bicameral, by the Lower House
of the Provincial Legislature, and to be tried by
the Upper House of the Federal Parliament, the
resolution in each case to be supported by not
less than two-thirds of the total membership of the

House concerned.

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(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.
(4) The Governor shall be eligible for re-election once, but only once.
Casual vacancies.
3.
Pilo and standin
(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.
(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.
Age qualifications.
4.
Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.
Disputes regarding election.

5.
Disputes regarding the election of a
Governor shall be enquired into and determined
by the Supreme Court of the Federation.
Conditions of
6.
(1) The Governor shall not be a member of
Governor's office.
the Provincial Legislature and if a member
of the Provincial Legislature be elected
Governor, he shall be deemed to have vacated his

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114
to 8
seat in that Legislature.
(2) The Governor shall not hold any
other office or position of emolument.
(3) The Governor shall have an official
residence and shall receive such emoluments
and allowances as may be determined by
Act of the Provincial Legislature and
until then such as are prescribed in
Schedule..
(4) The emoluments and allowances of
the Governor shall not be diminished during
his term of office.
Executive authority
of Province.
7.
Extent of the Executive
authority of Province.
The executive authority of the Province
shall be exercised by the Governor either
directly or through officers subordinate to
him, but this shall not prevent the Federal
Parliament or the Provincial Legislature from

conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

Note. The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or

groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects. 7

Council of Ministers.

9.

There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or

under this Constitution required to exercise his functions or any of them in his discretion.
[Note. For the most part, the Governor will act on advice, but he is required to act in his discretion in the following matters:-
(1) the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof (clause 15(2) of this Part)
(2) the summoning and dissolving of the Provincial Legislature (clause 20 of this Part)
(3) the superintendence, direction, and control of elections (clause 22 proviso (2) of this Part)
(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General (Part III).
It is to be noted that the Govem or, under the proposed Constitution, is to be

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elected by the people, so that he is not likely to abuse his "discretionary" powers]
10. If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.
11. The question whether any, and, if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.
Other provisions as

to ministers.

Conventions of responsible Government to be observed.

12. The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office,

14.

In the appointment of his minsters and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in

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Schedule....

....; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

Special responsibilities of Governor.

Note.- Schedule..... will

take the place of the Instrument of Instructions now issued to Governors.]

15.

(1) In the exercise of his responsi - hilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Advocate-General for Province.

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is un- able to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

16. (1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall re-. tire from office upon the resignation of the

Conduct of business of Provincial Government.

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118

112

Prime Minister, but may continue to carry

on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

All executive action of the Govern-
17.
ment of a Province shall be expressed to be taken in the name of the Governor.

Rules of Business.
18.
The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

Constitution of Provincial Legislatures.

Chapter II.

The Provincial Legislature,

19. (1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall, in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative
be
Assembly shall/on the basis of adult

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suffrage, an adult being a person of not less than 21 years of age.
(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.
(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:-
(a) The total numerical strength of the Upper House should not exceed 25 per cent of that of the Lower House.
(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:-
one-half to be elected by functional representation on the Irish model%;B
one-third to be elected by the Lower House by proportional representation;
one-sixth to be nominated by the Governor on the advice of his ministers.
[Note. Under the existing Constitution, Madras, Bombay, Bengal, the U.P., Bihar and Assam have 2 Houses and the rest
1. It was agreed that the members of the Constitutent Assembly from each Province

should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women. 7

20. The provisions for the meeting, proroga tion and dissolution of the Provincial Legisla- ture, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc. shall be on the lines of the corresponding provisions in the Act of 1935.

21.
Language.

In the Provincial Legislature, business shall be transacted in the Provincial language. or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,

(a) the delimitation of territorial constitutencies;

(b) the qualifications for the franchise and the preparation of electoral rolls;

Franchise for the

Provincial Legislature.
22.

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10. :-
(c) the qualifications for being elected
as
as a member of either House;
(d) the filling of casual vacancies in
either House;
(e) the conduct of elections under this
Constitution and the methods of voting
thereat;
(f) the expenses of candidates at such
elections;
(g) corrupt practices and other offences
at or in connection with such elections;
(h) the decision of doubts and disputes
arising out of or in connection with
such elections;
(i) matters ancillary to any such matter
as aforesaid:
Provided
(1) that no member of the Lower House
shall be less than 25 years of age
and no member of the Upper House
shall be less than 35 years of age;
(2) that the superintendence, direction,
and control of elections, including
the appointment of election tribunals
shall be vested in the Governor acting
in his discretion.
Chapter III.
Legislative powers of the Governor.
23. (1) If at any time when the Provincial

Legislature is not in session, the Governor is

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122
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satisfied that circumstances exist which
render it necessary for him to take immediate
action, he may promulgate such ordinances as
the circumstances appear to him to require.
(2) An ordinance promulgated under this
clause shall have the same force and effect
as an Act of the Provincial Legislature
assented to by the Governor, but every such
ordinance -
(a) shall be laid before the Provincial
Legislature and shall cease to
operate at the expiration of six
weeks from the reassembly of the
Provincial Legislature, or, if
before the expiration of that
period resolutions disapproving
it are passed by the Legislature,
upon the passing of the second of
those resolutions; and
(b) may be withdrawn at any time by
the Governor.
in
(3) If and so far as an ordinance under
this clause makes any provision which the
Provincial Legislature would not under this
Constitution be competent to enact, it shall
be void.
[Note. The ordinance-making power has
been the subject of great criticism under the
present Constitution.
It must however be
pointed out that circumstances may exist where

the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Provincial Legislature.
In

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1925, Lord Reading found it necessary to make an ordinance abolishing the cotton excise duty when such action was immediately and imperatively required in the interests of the country. The Governor who is elected by the people and who has normally to act on the advice of ministers responsible to the Legislature is not at all likely to abuse any ordinance-making power with which he may be invested.
Hence the proposed provision. 7
Chapter IV.
Excluded and Partially Excluded Areas.
The provisions of this Chapter cannot be framed until the Advisory Committee has reported. 7
Part II.
The Provincial Judiciary.
1.
The provisions of the Government of India Act, 1935, relating to the High Court should be adopted mutatis mutandis; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).
2.

The judges of the High Court shall
receive such emoluments and allowances as may
be determined by Act of the Provincial Legis-
lature and until then such as are prescribed
in Schedule

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124
119
3.
The emoluments and allowances of the
judges shall not be diminished during their
term of office.
Part III.
Provincial Public Service Commission
and Provincial Auditor-General.
Provisions regarding Public Service
Commissions and Auditors-General should be
inserted on the lines of the provisions of
the Act of 1935. The appointment of the
Chairman and members of each Provincial
Public Service Commission and of the Auditor-
General should be vested in the Governor in
his discretion.
Part IV.
Transitional Provisions.
1.
Any person holding office as Governor
in any province immediately before the commence-
ment of this Constitution shall continue as
such and shall be deemed to be the Governor of
the Province under this Constitution until a
successor, duly elected under this Constitution,
assumes office.
2.
There should be similar provisions,

mutatis mutandis, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).
Note. These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes

Page - 127
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into force. 7
The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.

Page - 128
CONSTITUTIONAL PRECEDENTS
(THIRD SERIES)
PAMPHLET NO. 3:-
Head of State.
SNO.1665
(126)

Page - 129
1
HEAD OF THE STATE
By Head of the State" is meant the Supreme Executive Authority of the State. It is now well recognized that every State must have such a Chief Executive. In many cases the King was originally the repository of all powers

in the State. He was the law-giver, the executor of the law and the judge. But gradually, one by one, these powers were delegated by him to others and in some cases, he even disappeared. Where he disappeared, the problem arose of having a suitable substitute. Even Cromwell found it necessary to evolve the office of a Lord Protector. The need was particularly felt in the international sphere. There were certain duties, e.g., receiving foreign potentates and ministers, which it was impossible for a body of men, like a Cabinet or a Parliament, to perform simultaneously. Thus the various types of non-hereditary Executives we come across in the present day represent the various attempts made by Constitution makers to instal uncrowned kings in places which were once occupied by crowned ones.

It may be that in certain States in matters official the Head of the State is no more than a distinguished "Rubber Stamp"; but even a rubber stamp has its use.

A familiar test which is, therefore, adopted by text-book writers is to ask whether the Executive is real or nominal. In some cases the real and nominal blend in one person, as in the U. S. A.; there is then really no nominal Executive. But in the vast majority of cases it is possible to distinguish between the formal Head of the State and the real Executive. We are concerned here more with the nominal or formal Executive. The real Executives of modern Democracies have been dealt with in the pamphlet on 'Democratic Executives' in Constitutional Precedents (First Series).

Professor J. H. Kraus in "The Crisis of German Democracy", 1932, (p. 171) says that there are five possible types of State Heads which, named in the sequence of their importance, can be characterized under the following terms:-

(1) The representative head of the State.
(2) The head of the state bureaucracy.
(3) The guardian of the Constitution.
(4) The highest equalising factor in the balance of the state machinery, and
(5) The leader of the people.

This classification reveals the various purposes for which the Head of the State is constituted. The Heads of the different States fall under one or more of these types according to the particular emphasis which the Constitution places upon their functions.

UNITED KINGDOM

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In the United Kingdom, there is, as everybody knows, a constitutional

monarchy. Most executive authority is legally vested in the King and is exercised in his name. But every official act of the King is done on the responsibility of a Minister. On this is based the doctrine that the King can do no wrong; for what he does some Minister is held responsible.
127

Page - 130
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128
2
The legal position of the Crown has been little affected by the passage of time. It remains nearly the same as in 1872 when Bagehot gave the following startling enumeration of the legal powers of the Crown :-
"The Queen could disband the army (by law she cannot engage more than a certain number of men); she could dismiss all the Officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a "University"; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of bad
civil government within the Government, could disgrace the nation by a war or peace and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations".
This passage illustrates the vast reserve of the powers vested in the King of England. The fact that no monarch in his senses would on his own even attempt to exercise these powers is another matter.
du The powers of the Crown of the present day are derived from custom and from statute. The functions of the King may be dealt with briefly under three heads: (a) non-political; (b) political; and (c) formal.
en (a) The Crown has been described as the pivot of the "dignified part of the Constitution" and the following claims have been made for the institution of Monarchy: A Monarchy calls forth feelings which no Republic can evoke. It appeals to the sentiments of the people more than any other form of Government. It provides an "intelligible headpiece" and is valuable in excluding competition for the leadership of the society. Above all, the Crown

acts as the guardian of the "invisible "Constitution. It acts as a disguise", for, "it enables the real rulers to change without heedless people knowing it ".
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(b) It is not easy to describe the political functions of the Crown. A good deal depends upon the character of the Monarch. The regime of Queen Victoria provides ample evidence to show how an exceptionally capable Sovereign, strong of will and greatly devoted to duty, backed up by the experience gained during a long reign, left a profound impression upon the government of the day. In the words of Gladstone, "The acts, the wishes, the example of the Sovereign in this country are a real power. An immense reverence and tender affection await upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the Constitution."
(c) Of the formal prerogatives of the Crown the following are the more important, namely, (i) the right of dissolution, i.e., the right to appeal from the Parliament to the people; (ii) the right to refuse a dissolution, i.e., the right to appeal from the Ministry to the Parliament; and (iii) the right to select his Chief Adviser, that is, the Prime Minister. These rights are, no doubt, circumscribed by many considerations, but no one can deny that these rights exist.
Mention may also be made here of three other rights enumerated by Bagehot: the right to be consulted, the right to encourage, and the right to warn. "A King of great sense and sagacity would want", he wrote, " no other". The letters of Queen Victoria afford various instances where this masterful Sovereign exercised all these rights.

CANADA, AUSTRALIA AND SOUTH AFRICA
In each of these Dominions the de jure Head of the State is the King of England, but in every Dominion he is represented by a Governor-General. It may be useful to reproduce here the relevent provisions in the three Constitutions :
Canada
"Sec. 9. The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Sec. 10. The provisions of this Act referring to the Governor-Genera.
extend and apply to the Governor-General for the time being of Canada, or other Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated.
Sec. 15.-The Command-in-Chief of the land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.
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(British North America Act, 1867.)
Australia
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dididi
Sec. 61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.
Sec. 68. The Command-in-Chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative."
(The Commonwealth of Australia Constitution Act, 1909.)
South Africa
"Sec. 8.-The Executive Government of the Union is vested in the King and shall be administered by His Majesty in person or by a Governor-General as his representative.
Sec. 9. The Governor-General shall be appointed by the King and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty be pleased to assign to him.
Sec. 10. There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.
Sec. 17. The Command-in-Chief of the naval and military forces within the Union is vested in the King or in the Governor-General as his representative. "
(South Africa Act, 1909.)
Under the old colonial system the Governor-General represented the Crown, that is, the Home Government. He was all powerful. Gradually, just as the

power of the King at home was first checked and finally taken over by a Cabinet responsible to the Parliament, so also, the power of the Governor-General in the colonies passed from his hands into the hands of the people of
123

the colonies. With the history of the transition from the colonial system to the responsible Government of the present day we are not concerned. What has to be noted is that the Governor-General came, to occupy in the dominions a position similar to that of the King in England. He represented a mere formal Head of the State, After the Imperial Conference of 1926, the Governor-General in a Dominion ceased to represent the Government of Britain (considered as Cabinet) and became merely a representative of the King, with the result that the Government of the United Kingdom had to appoint another official, called the High Commissioner, in a Dominion to act as a liaison officer between the Dominion and the Home Government.

In Canada and Australia, the Governor-General whenever there is a vacancy in the office, is appointed by the King primarily, if not solely, on the advice of the Dominion Cabinet. But, in South Africa, the Governor-General is appointed on a commission counter-signed by the Prime Minister of the Union and not by a British Secretary of State. The Union Government is thus solely responsible for this appointment. The term of office of the Governor-General in all the three Dominions is 5 years.

The Cabinet is the de facto Executive in the Dominion. In all political matters the Governor-General acts only on the advice of the Cabinet. He does not preside over the business meetings of the Cabinet, which are summoned
in the name of the Prime Minister. The Governor-General acts merely as the constitutional head of the Government advised by Ministers.

IRELAND

In Ireland there is no Governor-General but a President. When the new Constitution was passed in 1937, all references to the King and in the main to the Governor-General were omitted from it, but the Executive Council was authorized to avail itself, for diplomatic and consular appointments and international agreements, of any organ used for these purposes by other Members of the British Commonwealth, though that term was avoided. Therefore

it is rather difficult to define the exact position which Ireland occupies in the British Commonwealth. Mr. De Valera claims that Ireland is a Republic, while His Majesty's Government treats it as part of the British Commonwealth.

The Irish Executive is of the British responsible type, that is to say, it is a parliamentary Executive. The President is therefore a formal Head of the State and, save as otherwise provided in the Constitution, all powers and functions conferred on the President by the Constitution are to be exercised by him only on the advice of the Government of the day.

The President is elected by the people. The electorate is the same as that for the Dail. The election is by secret ballot on the system of proportional representation with the single transferable vote. He holds office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies or resigns or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five Judges. Atried is eligible for re-election to that office but only once.

He may not leave the State during his term of office save with the consent of the Government. He may be impeached for stated misbehaviour.

A proposal in either House of the Legislature to prefer a charge against the President may not be entertained unless upon a notice of

motion in writing signed by not less than 30 members of that House. An such proposal may be adopted by a House only upon a resolution of that House supported by not less than two-thirds of the total membership thereof When a charge is preferred by one House, the other House is to investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at the investigation of the charge. If, as a result of the investigation, a resolution is passed, supported by not less than two-thirds of the total membership of the House of the Legislature by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, the resolution operates to remove the President from his office.

FRANCE

A brief reference may be made here to the position of the French Presidents both under the old Constitution of 1875, and under the new Constitution which has just been approved by the people of France.

The President under the Constitution of 1875 has been made famous by a classic aphorism of Sir Henry Maine. "There is no living functionary he wrote, "who occupies a more pitiable position than a French President. The old Kings of France reigned and governed. The constitutional King of England, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern. This statement was substantially true; the real Executive in France was the Cabinet and the President was merely a figurehead.

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He was elected for seven years, not by the people but by the two Houses of the French Parliament, sitting together as a National Assembly. He was re-eligible for election any number of times. Under the previous Constitute tion the President had been responsible to the Legislature, but the inconvenience and danger of this principle soon became apparent and therefore when the Constitution came to be revised in 1875 he was made "irresponsible except in the case of high treason. If accused of high treason, the President could be impeached by the Chamber of Deputies, and tried by the Senate. The Senate had the power to order his dismissal 'and to impose suitable penalties. Save as above, the President was, for the duration of his term, irremovable. In the Executive sphere he could act only through his Ministers who under the Constitution were to countersign every decree of his. His position was, in fact, merely that of "a constitutional King for seven years".

Under France's latest Constitution the President of the Republic will be elected for seven years by the two Houses of the Legislature. Among his powers are the following:

He designates the Prime Minister and confirms the latter's choice of Ministers. He presides over the Council of Ministers, the Council of Magistrates, now less dependent on political parties, and the Supreme Council of National Defence. He confirms the dissolution of the assembly if the Government has been out voted twice within 18 months after the first 18 months of its existence. All his edicts must be countersigned by the Premier and another Minister,

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THE WEIMAR CONSTITUTION OF GERMANY
Under the Weimar Constitution of 1919 the Reich President was elected by the whole German people by secret, equal and direct ballot, men and women being entitled to vote. The fathers of this Constitution deliberately discarded the French system of the Parliament electing the President, as such a system was, in the words of Hugo Pruess, "false parliamentarism". According to him, real parliamentarism postulates two organs of State which are on an equal footing, e.g., Parliament and President, and this can only be achieved if the President is elected not by the Parliament but directly by the people. too.al tits mid
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Any German over 35 years of age may be elected to the Presidency.
was not necessary, as in the U. S. A., for the President to be born on German
Nor was there any
soil; it was sufficient if he was a German citizen.
restrictive provision, as in the old French Constitution, prohibiting a member of one of the reigning families of Germany from becoming the President.
To be elected a President, a candidate had to receive an absolute majority of the votes cast. If at the first election no candidate received a majority of votes, a second ballot was held. This second ballot was not necessarily confined to the two candidates who obtained the highest number of votes in the first ballot; it was even permissible for a candidate to contest the election for the first time at the second ballot. For instance, in 1932, President von Hindenberg was in fact put up as a candidate only at the second ballot.band 18 batial to ab
The term of office of the President was seven years, which was much longer than the term of the Reichstag which, at the most, could extend only to four years. He could be re-elected any number of times, but his term of office could be terminated prematurely by deposition. Such deposition was to be proposed by the Reichstag by a resolution which required a two-thirds majority and was decided by the people. In case the verdict of the popular vote went in favour of the President, he could remain in office for a further term of seven years and the Reichstag was automatically dissolved. The President or any of his Ministers could be impeached for violation of the Constitution or a Reich Law

by a two-thirds vote of the Reichstag, the trial being held in a special Court, the Staatsgerichhof. In case of any temporary incapacity of the President, the Chancellor was to act as his constitutional substitute.
The President was the Commander-in-Chief of the army and navy, and represented the Reich in foreign affairs, but a declaration of war could be made only by the Legislature while alliances and treaties required its assent. The President had the Power to appoint and dismiss the Chancellor and Ministers as well as all the officers, Civil and Military. He had the right to pardon in any case decided by the German Supreme Court in the first instance or by any other Court in Germany. In the sphere of legislation he promulgated the Reich Laws. Under certain circumstances he could order a plebiscite to be held and, within the limits of Article 48 of the Constitution, could even legislate. But all his decrees and orders had to be countersigned by a Minister, who thereby accepted responsibility for them. The position of the President was therefore strictly based on the model of a Parliamentary Executive. G
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SWITZERLAND
The Cons-
The Executive of the Swiss Confederation is a peculiar one.
titution provides that the supreme directing and executive power of the Confederation is exercised by a Federal Council composed of seven members. It has been said that the Constitution of the Swiss Republic "confides the executive authority neither to a President nor to a Premier: neither to a Cabinet nor to an autocrat ". The Swiss Executive can be classified neither under parliamentary nor under non-parliamentary executives. In fact, it appears to have succeeded in combining the merits and excluding the demerits of both (parliamentary and fixed executive systems. The Federal Council, as the Swiss Executive is called, is a body consisting of seven members who are elected by the two Houses of the Legislature, sitting together as a National Assembly. They are elected at the beginning of each new National Council for the duration of that Assembly, namely, three years. The Federal Council is completely renewed after every general election of the National Council.

In the Federal Council power is not concentrated in any one man; it is held equally among the seven members. There is, as it were, a diffusion of executive power among a body of men. But every year the Federal Assembly nominates one of the members of the Federal Council as the President of the Confederation who presides over the Council and another as the Vice-President of the Council. The outgoing President cannot be elected President or Vice-President for the following year, nor can the same member act as Vice-President for two consecutive years. Usually the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council. The President gets a salary equal to about £60 a year more than each of his colleagues during his term of office.

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By the actual arrangement, the work of the President of the Confederation has been considerably diminished. He is of course still head of a department, which may no doubt be that of foreign affairs, though he can equally direct one of the others, such, for instance, as war or finance. But his presidential functions have been lessened by relieving him of a number of matters of mere administrative procedure, and of the duty of giving numerous audiences to foreign representatives and other persons. He still opens all correspondence addressed to the Federal Council, distributes the business among the different departments, presides at the sittings of the body, and signs the notes and other official correspondence in its name. He still receives foreign representatives on certain occasions, such as the delivery of letters from the head of their country, and the presentation of their letters of credence and recall. He also continues to take the first place, ranking before his colleagues, upon public occasions. It is thus clear that the President of the Confederation has not a tithe of the power entrusted to the President of the United States. He may, indeed, without any disrespect, be likened to the chairman of a board". (Adams & Cunningham: "The Swiss Confederation", 1889.)

THE UNITED STATES OF AMERICA

...The American President provides a perfect illustration of a non-parliamentary or fixed Executive. According to the Constitution the

"executive power shall be vested in the President of the U.S.A.," and "he shall hold Office during the term of four years.... together with the Vice-President chosen for the same term ".

The method of election both of the President and the Vice-President is provided for by the Constitution with great precision. "This process of election," wrote Hamilton, "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

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The Constitution contemplates that the election should be indirect. It provides first for an electoral college, the members of which are chosen in each State to a number equal to the number of representatives from the State to the two Houses of the Congress. The actual method of choosing these electors is left to the discretion of each State Legislature. All the State Legislatures have directed that the Presidential electors shall be chosen at the polls by the qualified voters of the State. The electors meet in each State to nominate and cast votes for the Presidential and Vice-Presidential candidates. The votes are sent to the President of the Senate and are counted in the Houses of the Congress sitting in a joint session.

The Constitution intended to confer a wide discretion on the presidential electors in the choice of a President; but in practice, an elector dare not cast his vote for any other than the official nominee of his party. "As a matter of practice, the presidential electors in each State are nominated by the political parties, one slate of presidential electors by each party organization. This is done at state party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be. Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican party or the Democratic party. Strictly speaking, therefore, the President and Vice President are not elected in November. Only the presidential electors are elected at

that time. The official election of President and Vice-President takes place at the hands of these electors who meet in their respective states and vote as will be explained a little later." ("The Constitution of the United States by W. B. Munro, 1944, p. 74). The author explains later that the electors meet in their respective States and cast their votes on the first Monday in the following January.

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To be qualified for the office, the President must be a natural-born citizen of the U.S.A., not less than 35 years of age and resident in the country for at least fourteen years. His salary (which is $ 75,000) shall neither be diminished nor increased during his tenure of office. In case of a vacancy in the office of the President caused by death or any other disability during his term. his place is taken by the Vice-President; and in the event of a vacancy occurring in respect of both the President and the Vice-President, the office is to be filled ad interim by the various members of the Government according to a settled order fixed by statute. The President, the Vice-President and all civil officers of the U.S.A., are liable to be removed from office on impeachment for, and conviction of, treason, bribery, or other crimes and misdemeanours.

As to the genesis of the office, English writers lay much stress upon the British tradition. "It is tolerably clear," wrote Sir Henry Maine," that the mental operation through which the framers of the American Constitution passed was this: they took the King of Great Britain, went through his powers and restrained them whenever they appeared to be excessive, or unsuited to the circumstances of the United States." ("Popular Government". p. 212.) American writers have however taken pains to refute this, but the historical link with the past cannot be denied.

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In the words of Prof. Laski "there is no foreign institution with which in any basic sense, it can be compared, because basically there is no comparable foreign institution. The President of the United States is both more or less than a King; he is, also, both more or less than a Prime Minister ("American Presidency", 1943, p. 23.)

For the functions, etc., of the American President see Chapter IX of the pamphlet on "Democratic Executives" in Constitutional Precedents (First Series.)

Like Switzerland the U.S.S.R., also occupies a unique position. The Constitution does not provide for the office of a Chief Executive; on the other hand, the person who is spoken of as the President of the U.S.S.R., is the Chairman of the Presidium of the Supreme Soviet of the U.S.S.R., which is a sort of a standing Committee of the Legislature. This rather curious state of affairs may be explained by the fact that in the Russian Constitution the demarcation between the Executive and the Legislature is not so clear-cut as in some of the other constitutions. It will be noticed that the Presidium of the Supreme Soviet exercises many of the executive powers which in British India are exercised by the Governor-General.

The Supreme Soviet of the U.S.S.R., elects, at a joint sitting of both Chambers, its Presidium, consisting of a Chairman, sixteen Vice-Chairmen, a Secretary and twenty-four members of the Presidium. The Presidium is responsible to the Supreme Soviet in all its activities.

The Presidium has important functions. It convenes twice a year the sessions of the Supreme Soviet ; interprets the existing laws and issues decrees; dissolves the Supreme Soviet, in case of the failure of the two chambers to agree, and arranges for new elections; holds referendums on its own initiative or on that of one of the constituent republics; revokes the decisions and orders of the Councils of People's Commissars of the Union and of the constituent republics if they violate the law; in the intervals between the sessions of the Supreme Soviet removes from office and appoints People's Commissars of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet ; bestows decorations and honorary titles; exercises the right of pardon; appoints and dismisses the high command of the armed forces; in the intervals between the sessions of the Supreme Soviet has the power to declare a state of war and at all times to order mobilization, to ratify and to denounce international treaties, to appoint and recall ambassadors, to receive the credentials and letters of recall of foreign representatives.

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FUNDAMENTAL RIGHTS (II) o ile old (1)
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We may now proceed to analyse the fundamental rights embodied in the Constitutions of some of the more important countries of the world and to frame
the draft of a Bill of Rights for incorporation in the Indian Constitution.
For this purpose, it is useful to recognise a distinction between two broad classes of rights: there are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others merely require that the State shall abstain from prejudicial action. Typical of the former is the right to work, which cannot be guaranteed further than by requiring the State, in the language of the Irish Constitution, "to direct its policy towards securing that the citizens may, through their occupations, find the means of making reasonable provision for their domestic needs"; typical of the latter is the right which requires, in the language of the American Constitution, that "the State shall not deprive any citizen of his liberty without due process of law". It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head of "Fundamental Rights" in certain Constitutions, e.g., in the Constitution of the USSR and in the Weimar Constitution of the German Reich, possibly because neither was intended to be enforced by legal action. But the distinction is clearly recognised (though not uniformly pursued) in the Irish Constitution, which deals first with "fundamental rights" strictly so called, and then with "directive principles of social policy", the latter being expressly excluded from the purview of the courts. A similar distinction is recognised in Dr. Lauterpacht's "International Bill of the Rights of Man" (1945). The substantive provisions of the Bill are in two parts, Part I dealing with rights meant to be enforced by the ordinary courts and Part II dealing with rights incapable of or unsuitable for such enforcement. We may usefully follow this plan and separate the two classes of rights: Part A may

deal with fundamental principles of State policy and Part B with fundamental rights strictly so called. The following draft is suggested for Part A ; it is meant to be illustrative rather than exhaustive :-

"PART A,,.

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"The principles set forth in this Part are intended for the general guidance of the appropriate legislatures and governments in India (hereinafter referred to collectively as 'the State'). The application of these principles in legislation and administration shall be the care of the State and shall not be cognisable by any court.

"1. The State shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.

"2. The State shall promote internal peace and security by the elimination of every cause of communal discord.

137

138

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"3. The State shall, as far as possible, secure to each citizen-

(1) the right to work,

(2) the right to education,

(3) the right to maintenance in old age and during sickness or loss of capacity to work,

(4) the right to rest and leisure,

In particular, the State shall make provision for free and compulsory primary education.

"4. The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

"5. The State shall protect the culture, language and script of the various communities and linguistic areas in India.

"6. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
7. The State shall ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that they shall not be forced by economic necessity to take up occupations unsuited to their sex, age or strength."
It is obvious that none of the above provisions is suitable for enforcement by the courts. They are really in the nature of moral precepts for the authorities of the State. Although it may be contended that the Constitution is not the proper place for moral precepts, nevertheless constitutional declarations of policy of this kind are now becoming increasingly frequent. (See the In troduction to the I.L.O., publication "Constitutional Provisions concerning Social and Economic Policy", Montreal, 1944.) They have at least an educative value. The first clause is taken from the Declaration of Havana made in 1939 by the representatives of the Governments, employers and workpeople of the American Continent. The second, fourth and fifth clauses are peculiary needed in India. The third clause embodies certain objectives of social and economic policy which are now widely recognized; see, for example, Articles 118-121 of the Constitution of the USSR and Articles 42 and 45 of the Irish Constitution. The sixth clause relating to nutritional and other standards is taken from the recommendations of the United Nations Conference on Food and Agriculture, 1943, and is of special importance to India. The seventh clause is taken from Article 45 (4) 2° of the Irish Constitution, 1937.
We now come to the other Part, Part B, relating to fundamental rights strictly so called, that is to say, rights which are meant to be enforced by legal action. Here we enter upon controversial ground.
"There are very few countries which have fully adopted the system of judicial review enabling courts to act in that capacity in the matter of the fundamental rights of the individual guaranteed by the constitution. In the

United States, by long-established practice-though not in pursuance of any express provision of the Constitution-the Supreme Court has exercised that
power since its decision in the historic case of Marbury v. Madison. This is also the position, by virtue of an express constitutional provision, in Brazil, Venezuela, and some other Latin-American countries, in Czechoslovakia,

Rumania, and the Irish Free State. In a number of countries-such as Australia, Canada, and Germany (in the Constitution of 1919)-judicial review is limited largely to questions relating to the respective legislative competence of the Federation and of the Member States.

"On the other hand, in many States the constitution specifically excludes the interpretation of laws-and a fortiori any declaration of their invalidity-from the purview of the judiciary. Judicial review of legislation is contrary to the constitutional doctrine of France, and above all, of Great Britain, where the supremacy of Parliament is absolute. Although the Constitution of Soviet Russia of 1923 gave (in Article VII, sec. 43) the Supreme Court of the Union the power to render decisions, at the request of the Central Executive Committee of the Union, on the constitutionality of any regulations made by the Republics of the Union, no such powers have been conferred upon it by the Constitution of 1936.

"The doctrine of judicial review has been defended with fervent approval by great lawyers in the United States and elsewhere. Daniel Webster and Francis Lieber praised it as a bulwark of liberty. Lord Bryce was of the view that "there is no part of the American system which reflects more credit on its authors or has worked better in practice." Dicey was a strong believer in the doctrine of the supremacy of Parliament in England. But he was emphatic that it was "the glory of the founders of the United States"-in fact the doctrine of judicial review was adopted a quarter of a century after the foundation of the Republic-to have established a system of protection of the Constitution essential to a federal system (actually, the exercise of the Supreme
power of judicial review by the
Court has borne little
relation to the fact of the federal structure of the United States). Tocqueville praised it as most favourable to liberty and to public order. After one hundred and forty years of operation it has the unqualified support of a large-perhaps predominant-section of American legal opinion as a bulwark of liberty of the people against the rashness and the tyranny of short-lived legislative majorities.

"On the other hand, the doctrine of judicial review has found from its ver v inception violent opponents and detractors in the country of its origin. Jefferson and Madison denounced it. Great teachers of constitutional law, such as J. B. Thayer, have drawn attention to the dangers of attempting to find in the Supreme Court-instead of in the lessons of experience-a safeguard against the mistakes of the representatives of the people. That criticism has

grown in the last fifty years to the point of bitter denunciation as the result of the exercise of the power of judicial review in a manner which, in the view of many, has made the Supreme Court a defender of vested rights and social statics. Some French jurists, who were attempting to find a remedy for the absence of an effective guarantee of fundamental rights in their own constitution have come to regard the experience of judicial review in the United States as a sufficient deterrent against introducing judicial review in France. In countries other than the United States, in which judicial review of legislation is recognized, it has been exercised only in rare cases for the protection of the rights of the individual." [Pp. 186-190, omitting footnotes. Lauterpacht An International Bill of the Rights of Man, 1945.]
132
139

Page - 142
140
In the peculair circumstances of India, there may well be a demand for a Bill of Rights enforceable in the courts. There is ample material available for the preparation of such a Bill, but its drafting will require great care and must be reserved for a future occasion.
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Page - 143
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From :-
SNO. 1666 74(M
CA. 42/47- Cons.
CONSTITUENT ASSEMBLY OF INDIA
Council House,
New Delhi, the
25th April, 1947.
To
K.V.Padmanabhan Esq., M.A., LL.B.,
Assistant Secretary.
All the Members of the Constituent Assembly and the Committees of the Assembly.

Sir/Madam,
I am directed to forward herewith, for your use, a copy of a handbook showing the personnel of the Committees set up by the Constituent Assembly, with the Resolutions or Rules under which they were set up.
H/25-4-47.
400 Copies.
I have the honour to be,
Sir/Madam,
Your most obedient servant,
MuPadmanashan
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K.V.PADMANABHAN.)
ASSISTANT SECRETARY.

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ALL MEMBERS OF THE CONSTITUENT ASSEMBLY
New Delhi, the 31st January, 1947
SIR,
SUBJECT: Procedure regarding Divisions in the Constituent Assembly
llado
I am directed to state for your information and guidance that the following procedure has been laid down by the President for taking divisions in the Constituent Assembly.
an noquards
I. On the conclusion of a debate, the question before the House should be put from the Chair. Those in favour of the motion shall be invited to say 'Aye'.

and those against it 'No', and the Chairman shall say 'I think the Ayes (or the Noes) have it.' If this statement of the person presiding goes unchallenged, he shall then say twice 'The Ayes (or the Noes) have it'; and the question before the House shall be determined accordingly.

II. But if the minority desire a division, they shall challenge the opinion by exclaiming 'The Noes (or the Ayes) have it', whereupon the person presiding, if satisfied that the division is justifiably claimed, shall order a division to be held by uttering the word 'Division'. Upon this order, the Secretary shall cause electric bells to ring in the Notice Office, and in other appropriate rooms and passages in the Council House in order to summon absent members to the Constitution Hall. Immediately after the bells stop ringing, all the outer doors of the Members' Lobby shall be closed, and the Watch and Ward Staff posted at each door with instructions to prevent any entry or exit through these doors until the division is concluded. Then the person presiding shall read the terms of the motion before the House and put the question for a second time. If a division is still demanded he shall say 'Ayes to the Right. Noes to the Left."

III. According as they wish to vote, Members shall then proceed to the 'Ayes' or 'Noes' lobby, and there pass in single file before the Telling Clerk. On reaching/the desk of the Telling Clerk each Member in turn shall call out the division number which is allotted to him for this purpose and which he is requested to commit to memory at the commencement of each session. The Telling Clerk shall then mark off this number on the division list, simultaneously calling out name of the Member. In order to ensure that his vote has been properly recorded, the Member should not move off until he has clearly heard the Telling Clerk thus call out his name.

IV. (a) When the voting process as described above is completed in the division lobbies the Telling Clerks shall present their division lists to the Secretary who shall count the votes recorded thereon, and present the totals of 'Ayes' and 'Noes' to the person presiding, who shall announce the result to the House. The division is not at an end until the result is so announced. If the numbers of 'Ayes' and 'Noes' are equal the question shall be decided by the casting vote of the person presiding.

(b) A resolution in the Constituent Assembly varying the provisions of paragraph 15 of the Cabinet Mission statement or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. Votes shall be counted accordingly in the divisions on such resolutions.

136 (143
2
V. (a) A member who is unable to go to the division lobby owing to illness may, with the permission of the Chair, have his vote recorded either at his seat in the Assembly Chamber or in the Members' Lobby.
(b) If a member finds that he has voted by mistake in the wrong lobby, he shall be allowed to correct his mistake, provided he brings it to the notice of the Chair before the result of the division is announced.
(c) When the Telling Clerks have brought the division lists to the Secretary's table a member who has not till that time recorded his vote but who then wishes to have his vote recorded may do so with the permission of the Chair.
VI. If in the opinion of the person presiding, a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the members who are for 'Aye' and for 'No' respectively to rise in their places, and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman, there and then declares the determination of the House, the names of voters will not ordinarily be recorded.
I have the honour to be,
SIR,
Your obedient servant,
H. V. R. IENGAR,
Secretary, Constituent Assembly.
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no GIPD-L9C Assembly-27-1-47-550.

Page - 146
To
SNO 1668
CA/52/RR/47
CONSTITUENT ASSEMBLY OF INDIA.
144
+37
Council House,
New Delhi, the 30th April, 1947.
(1) All members of the Constituent Assembly.
(2) Members of the Committees who are not
members of the Constituent Assembly.
Subject: PARLIAMENTARY DEBATES AND OTHER PAPERS.
-
Sir,
I am directed to send herewith for your
use a copy each of the following: -
2.
(i)
Parliamentary Debates (Hansard),
House of Commons on Indian Policy
(February - March 1947).
173
(ii) Parliamentary Debates (Hansard),
House of Lords - on Indian Policy
(February 1947)
(iii) Constitution of Republic of China
and Constitution of Japan.
(iv) A Bird's-Eye View of the Principal
Federations and Unions in the World
(in Chart Form)
Items (iii) and (iv) form part of the
Constitutional Precedents (Second Series) and may kindly
be added to the copy already supplied to you.
AVT/300 copies.
I have the honour to be,
Sir,

Your most obedient servant,
Mulaimanathan
(K.V. PADMANABHAN)
ASSISTANT SECRETARY.

Page - 147
SNO 1669
No. CA/68/Ser./47.
CONSTITUENT ASSEMBLY OF INDIA
138
145
To
Council House,
New Delhi, the 28th August, 1947.
All Members of the Constituent Assembly of India.
Subject: Curfew Passes for Members of the Constituent Assembly.
Dear Sir/Madam,
Members residing in areas where curfew is in force or likely to be so in Delhi may kindly apply to the District Magistrate, Delhi, for passes for the Members and their personal assistants etc. so as to enable them move through such areas. The District Magistrate is being requested to ensure that such requests receive prompt attention, and also to permit the Members to use their membership cards in lieu of curfew passes until such time as the passes are issued.
Yours truly,
to
(B.F.H.B.Tyabji)
Joint Secretary.

Page - 148
SNO-1670
CA/52/RR/47
CONSTITUENT ASSEMBLY OF INDIA
+39
(146
Council House,
New Delhi, 22nd August, 1947.

Subject: Distribution of Constituent Assembly
Dear Sir/Madam,
Papers
I send herewith for your use a copy each of the
following papers:-
1. The India (Provisional Constitution)
Order, 1947.
2. Form of agreement between Indian States
and the Dominion of India.
3. Form of Instrument of Accession.
Yours truly,
(K.V.PADMANABHAN)
UNDER SECRETARY.
TO
ALL MEMBERS OF THE CONSTITUENT ASSEMBLY.

Page - 149
TYA
+40
INSTRUMENT OF ACCESSION OF.....
WHEREAS the Indian Independence Act, 1947, provides
that as from the fifteenth day of August, 1947, there shall
be set up an independent Dominion known as INDÍA, and that
the Government of India Act, 1935, shall, with such
ommissions, additions, adaptations and modification as
the Governor-General may by order specify be applicable
to the Dominion of India;
AND WHEREAS the Government of India Act, 1935, as
so adapted by the Governor-General provides than an Indian
State may accede to the Dominion of India by an Instrument
of Accession executed by the Ruler thereof:
Ruler
I....
of
NOW THEREFORE
B
in the exercise of my sovereignty in and over my said State
Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of...
(hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Indepdance Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.
6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this

State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the vaildity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this..
August, Nineteen hundred and forty seven.
.day of
I do hereby accept this Instrument of Accession.
Dated this.
and forty seven.
day of August Nineteen hundred
(Governor-General of India)

SCHEDULE
The matters with respect to which the Dominion
Legislature may make laws for this State
HZ
A. Defence
1. The naval, military and air forces of the Dominion
and any other armed force raised or maintained by the
Dominion;
any armed forces, including forces raised
or maintained by an Acceding State, which are attached to, or
operating with, any of the armed forces of the Dominion.
2. Naval, military and air force works, administration
of cantonment areas.
3. Arms; fire-arms;
4. Explosives.
B. External Affairs
1. External affairs;
ammunition.
the implementing of treaties and
extradition, including
agreements with other countries;
the surrender of criminals and accused persons to parts
of His Majesty's dominions outside India.
2. Admission into, and emigration and expulsion from,
India, including in relation there to the regulation of the
movements in India of persons who are not British subjects
domiciled in India or subjects of any acceding State;
pilgrimages to places beyond India.
3. Naturalisation.
C. Communications.
1. Posts and telegraphs, including tele phones, wireless,
broadcasting, and other like forms of communication.
2. Federal railways; the regulation of all railways other
than minor railways in respect of safety, maximum and
minimum rates and fares, station and service terminal
charges, interchange of traffic and the responsibility
of railway administrations as carriers of goods and
passengers; the regulation of minor railways in respect

of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.
3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.
4. Port quarantine.
5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.
6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.
7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.
8. Carriage of passengers and goods by sea or by air.

9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.
D. Ancillary.
1. Elections to the Dominion Legislature, subjectlto the provisions of the Act and of any Order made thereunder,
2. Offences against laws with respect to any of the aforesaid matters.
3. Inquiries and statistics for the purposes of any of the aforesaid matters.
4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the Acceding State, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

AGREEMENT BETWEEN THE STATE OF
AND THE DOMINION OF INDIA
Whereas it is to the benefit and
Стя
...
+44
V
advantage of the Dominion
of India as well as of the Indian States that existing agreements and
administrative arrangements
in the matters of common concern,
should continue for the time being, between the Dominion of India
or any part thereof and the Indian States:
Now therefore
it is agreed between the
and the Dominion of India that:-
State
1. (1) Until new agreements in this behalf are made, all
agreements and administrative arrangements as to
matters of common concern now existing between the
Crown and any Indian State shall, in so. far as may
be appropriate, continue as between the Dominion
of India or, as the case may be, the part thereof,
and the State.
(2) In particular, and without derogation from the
generality of sub-clause (1) of this clause the
matters
referred to above shall include the
matters specified in the Schedule to this Agreement.
2. Any dispute arising out of this Agreement, or out of
the agreements or arrangements hereby continued, shall, unless anv
provision is made therein for arbitration by an authority other
than the Governor-General or Governor, be settled by arbitration
according, as far as may be, to the procedure of the Indian
Arbitration Act, 1899.
3. Nothing in this Agreement includes the exercise of
any paramountcy functions.
State
Secretary to the Government of India.

SCHEDULE.
1. Air Communications.
2. Arms and equipment.
3. Control of commodities.
4. Currency and coinage.
5. Customs.
6. Indian States Forces.
7. External Affairs.
8. Extradition.
9. Import and Export Control.
10. Irrigation and Electric Power.
11. Motor vehicles.
12. National Highways.
13. Opium.
14. Posts, Telegraphs and Telephones.
15. Railways (including police and other arrangements in Railway lands).
16. Salt.
17. Central Excises, relief from double income-tax and other arrangements relating to taxation.
18. Wireless.

METADATA

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